No. 87-5765

In The

Supreme Court of the United States

October Term, 1988

KEVIN N. STANFORD,

Petitioner,

v.

COMMONWEALTH OF KENTUCKY,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF KENTUCKY

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED NOVEMBER 2, 1987
CERTIORARI GRANTED OCTOBER 11, 1988

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TABLE OF CONTENTS

TABLE OF CONTENTS–Continued

TABLE OF CONTENTS–Continued

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

October 28, 1981 – Jefferson District Court, Juvenile Division, transfers jurisdiction of petitioner's case, pursuant to KRS 208.170, to Jefferson Circuit Court.

November 5, 1981 – Jefferson County Grand Jury returns Indictment No. 81CR1218 charging petitioner with capital murder, first degree robbery, first degree sodomy, and receiving stolen property over $100.

March 1, 1982 – Jefferson Circuit Court, Ninth Division, overrules petitioner's motion to transfer his case back to Jefferson District Court, Juvenile Division.

March 4, 1982 – Jefferson County Grand Jury returns Indictment No. 82CR0406 and petitioner is reindicted on charges of capital murder, first degree robbery, first degree sodomy, and receiving stolen property over $100.

August 2-13, 1982 – Petitioner is tried by a jury in Jefferson Circuit Court, Ninth Division. Jury finds petitioner guilty of capital murder, first degree robbery, first degree sodomy, and receiving stolen property over $100. Jury recommends death sentence on murder conviction and recommends maximum sentences of twenty (20) years, twenty (20) years, and five (5) years on the convictions for first degree robbery, first degree sodomy, and receiving stolen property over $100, respectively.

September 28, 1982 – Final judgment is entered by the Jefferson Circuit Court, Ninth Division, petitioner is sentenced to death on the conviction for murder and is sentenced to twenty (20) years imprisonment on the first degree robbery conviction, twenty (20) years imprisonment on the first degree sodomy conviction, and five (5)

years imprisonment on the receiving stolen property over $100 conviction. The latter sentences are run consecutively.

April 30, 1987 – Kentucky Supreme Court renders Opinion in *Stanford v. Commonwealth*, Ky., 734 S.W.2d 781 (1987) affirming judgment of conviction and sentences imposed on petitioner.

September 3, 1987 – Kentucky Supreme Court enters order denying petitioner's petition for rehearing and granting his petition for modification of opinion.

November 2, 1987 – Petition for a writ of certiorari is filed in United States Supreme Court.

October 11, 1988 – United States Supreme Court enters order allowing petitioner to proceed in forma pauperis and granting his petition for a writ of certiorari.

October 17, 1988 – United States Supreme Court enters amended order limiting grant of certiorari to Question VIII as presented in the petition for a writ of certiorari.

NO. ___ JEFFERSON DISTRICT COURT

JUVENILE DIVISION

IN THE INTEREST OF:

KEVIN STANFORD, A CHILD

MOTION TO DECLARE KRS 208.170 UNCONSTITUTIONAL IN ITS APPLICATION

Comes the child, by counsel, under the United States Constitution, Amendments 8 and 14, and the Constitution of Kentucky, sections 17, 27, 28, and 109, and moves this court to declare KRS 208.170 unconstitutional as applied. In support of such motion, the child notes the following:

1. The child is presently facing a transfer hearing under KRS 208.170 on charges of Murder, Sodomy, Robbery, and Receiving Stolen Property;

2. The transfer hearing is being held pursuant to a motion to transfer jurisdiction made by the Assistant County Attorney;

3. The court has previously found probable cause on the above mentioned charges after a hearing as required under KRS 208.170;

4. KRS 208.170 gives exclusive authority to the juvenile court to initiate waiver proceedings thus making it a judicial function;

5. Local practice in the Jefferson District Court has been for waiver hearings to be set upon a motion by an assistant county attorney

6. The abdication of such judicial authority as granted under KRS 208.170 to the executive branch of

government violates the separation of powers doctrine required under the Kentucky Constitution, sections 27, 28 and 109 which vest exclusive jurisdiction of judicial matters within the judiciary branch of government;

7. This type of encroachment into judicial affairs cannot be constitutionally tolerated. See *California v. Federal Power Commission*, 369 U.S. 482, 82 S.Ct. 901 (1962); *Green v. McElroy*, 360 U.S. 474, 79 S.Ct. 1400 (1959); *Kentucky v. Dennison*, 65 U.S. 66, 10 L.Ed. 717 (1800); *Commonwealth v. Schumacher;* Ky. App., 566 S.W.2d 702 (1978); and *Frazee v. Citizens Fidelity Bank and Trust Company*, Ky. 393 S.W.2d 778 (1965).

8. The executive branch is not vested with the power to make judgmental decisions affecting the rights and liberty of individuals. See *Green v. McElroy, supra;* and *Bradshaw v. Bell*, Ky., 487 S.W.2d 294 (1972).

9. The improper execution of KRS 208.170 violates both the equal protection and due process clause of the 14th Amendment of the United States Constitution since it allows the executive branch to selectively prosecute cases for waiver instead of properly allowing the judicial branch to make the initial judgment on which cases should be subject to a waiver hearing.

10. The lattitude (sic) given to the juvenile session of District Court in waiver proceedings assumes that the procedures used satisfy the basic requirements of due process and fairness and does not give the court the right to use arbitrary procedures. *Kent v. United States*, 383 U.S. 541, 86 S.Ct. 1045 (1966);

11. The procedures currently in use in the Jefferson District Court in following KRS 208.170 result in discrimination against the poor and the black;

12. The discriminatory application of KRS 208.170, and, in fact, the entire application of juvenile justice, can be seen by the disproportionate number of black children waived to the Grand Jury for homocide (sic) cases, the disproportionate precentage (sic) of black children institutionalized, and the extreme difference in the percentage of cases involving white children that are handled informally as compared to the percentage of cases involving black children that are handled informally;

13. KRS 208.170 further violates the 8th and 14th Amendments to the United States Constitution and section 17 of the Kentucky Constitution as it is applied, in that its enforcement is imposed only in selectively few cases which results in an arbitrary and discriminatory infliction of punishment on recognizable minorities. See *Furman v. Georgia*, 408 U.S. 238, 92 S.Ct. 2726 (1972), opinions of Justices Douglas, Brennan, White, Marshall, and Stewart;

14. Evidence of discrimination in the transfer of juveniles to the circuit court, supported by evidence of discrimination in other areas of discretion in the juvenile justice system, demonstrate the violations of the 8th and 14th Amendments in that certain classes of individuals, namely the black and the poor, are more likely to receive harsher and more severe treatment than those persons outside of their class;

15. Any law, even if it is non-discriminatory on its face, may be applied in such a way to violate the equal

protection guarantee. See *Yick Wo v. Hopkins*, 118 U.S. 356, 6 S.Ct. 1064 (1886) and *Furman v. Georgia, supra;*

AND

16. The discriminatory impact of a law, as it is applied can demonstrate its unconstitutionality because of the inability to explain the discrimination on nonracial or class grounds. See *Washington v. Davis*, 420 U.S. 229, 96 S.Ct. 2040 (1976).

WHEREFORE the child respectfully requests this Court, after a hearing, to issue an order finding KRS 208.170 unconstitutional as presently applied and thereby excluding this child from transfer to the circuit court.

Signature Block and Certificate of Service Omitted in Printing

ORDER

Motion having been made and this Court being sufficiently advised,

IT IS HEREBY ORDERED that KRS 208.170 be, and hereby is, declared unconstitutional as applied at the present time in this Court's jurisdiction.

IT IS FURTHER ORDERED that the child, Kevin Stanford, be, and hereby is, retained in the jurisdiction of Jefferson District Court, Juvenile Division for adjudication and disposition as a juvenile.

_____ _____

DATE JUDGE RICHARD FITZGERALD
JEFFERSON DISTRICT COURT
JUVENILE DIVISION

NO. JEFFERSON DISTRICT COURT
JUVENILE DIVISION

IN THE INTEREST OF A CHILD
KEVIN STANFORD

FINDING OF FACT; ORDER TRANSFERRING JURISDICTION UNDER KRS 208.170 TO CIRCUIT COURT

** ** ******* ** **

This case came on before the Court on the Petition of January 14, 1981, subsequently amended by the Commonwealth with additional facts and charges with the Petition of February 20, 1981 between the two Petitions alleging that in one transaction on January 7, 1981, Kevin Stanford committed the offenses of Robbery 1st Degree, Murder, Sodomy 1st Degree, Rape 1st Degree, Kidnaping and Receiving Stolen Property in a value over $100, regarding the premises and property of the Checker Oil Station on Cane Run Road in Jefferson County and the person of Barbel Poore.

At arraignment the office of the Public Defender was appointed to represent the Defendant and counsel and member or members of the childs family have been present at all critical stages of the prodeedings. The mother is not present at the time of the rendering of this decision.

Subsequent to the arraignment, proof was heard on various motions including a motion to suppress certain evidence based on procedural errors of the police in effecting the arrest. Certain evidence illegally obtained has been ordered suppressed.

On May 22, 1981, a probable cause hearing was held on the Petitions. A motion having been made by the

County Attorney to transfer jurisdiction to Circuit Court pursuant to KRS 208.170.

At that hearing proof was heard from Jefferson County Police Detectives, Hall, Smith, Hash, Tangle, Mr. Billings from the Kentucky State Crime Lab or Ms. Billings, Taylor, Evidence Technician Unit, Ms. Kolb from Metro ID, Mr. Workman from the Coroner's Office, Mr. Sanders, Alex Sloan and Troy Johnson the later being co-defendant, who has plead guilty in Juvenile Court to his participation in the alleged offenses. Probable cause was found of one count Robbery 1st Degree, a count receiving stolen property over $100, a count of Sodomy 1st Degree and a count of murder. The charge of rape was dismissed.

On July 14, 1981, as well as on August 10, 1981, and subsequently admitted defense evidence on out of state placements, proof was heard on the waiver portion of the transfer hearing. Proof was heard from Mr. Mattingly, of the Department of Human Resources, Mr. Henderson of the Department of Human Resources, Mr. Hildreth, Department of Human Resources, Mr. Matthews, Dr. Williams, Billy Ship, Linda Locking, Ellen Baum Dana Madison of the Urban League as well as file DHR reports and various records. Based on the proof heard the court finds as to the elements for consideration the following:

1) Seriousness of the offenses – the offense alleged and for which probable cause has been found are of the most serious nature reflected by the offense against persons as a disregard for human life.

2) Age and sophistication of child – Kevin Stanford was born August 23, 1963. The offense was committed when he was 17 and he has subsequently turned 18 in the

detention center. Various testimony was heard regarding his emotional maturity and sophistication. Proof was heard and the Court finds that he has a low internalization of the values and morals of society and lacks social skills. That he does possess an institutionalized personality and has, in effect, because of his chaotic family life and lack of treatment, become socialized in delinquent behavior. That he is emotionally immature and could be amenable to treatment if properly done on a long term basis of psychotherapuetic intervention and reality based therapy for socialization and drug therapy in a residential facility, from the record the following:

Petition and dates from records – The child has been placed in the DHS Group Home, Ormsby Village Treatment Center, Green River Boys Camp, the Department of Human Resources and Rice Audobon Vocational Educational Programs, as a result of delinquency petitions. His progress has been marginal in each based in part on the failure of the County and State to provide meaningful therapy for the child or after care intervention when he was returned after a relatively short time in each placement, to the streets of Jefferson County. His progress was basically that he learned how to behave enough to meet the minimal criteria for release each time approximately or roughly 6 months after placement, then cut loose to the same chaos and streets that he was not able to deal with, still without social skills, still delinquent and still uneducated.

As to the reason of prospects of rehabilitation in facilities available to the District Court Juvenile session, other than the possibility of a bridge status committment to the State Department of Human Resources with a

minimum of approximately six months in an institution, the only facilities for a youth or child of his age with his problems would be out of state placements in specialized long term programs for youth, as per proof the child may benefit from such placement. However, the Court lacks statutory basis to order the state to provide such institutionalization for the length of time sufficient to provide such intervention reasonable calulated (sic) to provide rehabilitation, and the State of Kentucky Department of Human Resources does not, nor does Jefferson County provide a meaningful alternative.

Therefore it is the finding of the Court that it is in the interest of the community and in the interest of the child that Kevin Stanford be transferred to Circuit Court and tried under the ordinary laws governing crime. At this time a Grand Jury date is set down for November 5.

/s/ Richard J. Fitzgerald
RICHARD J. FITZGERALD, Judge
Jefferson District Court

10/28/81
DATE

NO. 81CR1218 JEFFERSON CIRCUIT COURT
DIVISION NINE

COMMONWEALTH OF KENTUCKY PLAINTIFF

VS. *NOTICE-MOTION-ORDER*

KEVIN STANFORD DEFENDANT

Notice Clause Omitted in Printing

MOTION TO TRANSFER TO JEFFERSON DISTRICT COURT JUVENILE DIVISION

Comes the defendant, by counsel, pursuant to KRS 208.170(5)(b) and moves this Court to enter an order transferring the above-styled case back to Jefferson District Court, Juvenile Division. In support of this motion naythe defendant notes the following:

1. The Jefferson District Court, Juvenile Division, issued a written order transferring the defendant to Circuit Court on October 28, 1981.

2. In that order the Court found "That he [the defendant] is emotionally immature and could be amenable to treatment if properly done on a long term basis of psychotherapeutic intervention and reality based therapy for socialization and drug therapy in a residential facility."

3. The District Court further found that the Commonwealth of Kentucky Department of Human Resources offered no facility which could meet the needs of the defendant, but that such facility did exist out-of-state;

4. KRS 208.400 and KRS 208.410 place upon the Department of Human Resources the responsibility for

arranging programs to provide for the specialized treatment of committed according to their respective needs and problems and the responsibility for the development of necessary facilities "to provide an adequate and modern program for the care, treatment and rehabilitation of children";

5. The failure of the Department of Human Services to provide necessary programs under KRS 208.400 and KRS 208.410 should not be grounds for the transfer of a person to circuit court;

6. KRS 208.170(4) requires that any transfer to circuit court be in the best interest of the child;

7. The best interest of the defendant is not served by a transfer from a treatment-oriented system to a punishment oriented system;

8. KRS 208.194 provides for incarceration in a juvenile treatment facility for an indeterminate period of time providing for at least 6 months of institutionalization without being subject to the 18 year old ceiling provided in KRS 208.200 (In at least two statutes KRS 208.180 and KRS 208,200(1)(b), it is recognized that the state can maintain jurisdiction for treatment well past a juvenile's 18th birthday);

9. The law under which the defendant was tranferred, KRS 208.170 is being applied in Jefferson County in an unconstitutional manner;

10. KRS 208.170(1) calls for the Court to conduct a waiver hearing when the Court is of the opinion that the juvenile be tried as an adult, however in Jefferson District

Court, waiver hearings are set solely on the motion of the County Attorney;

11. By allowing the prosecutor to select which of the eligible cases be set for a hearing, the Court is allowing executive encroachment into a judicial affair violating the separation of powers doctrine required under the Kentucky Constitution, sections 27, 28 and 109.

12. Selectivity in the enforcement of any law cannot be tolerated as it results in a violation of both equal protection of the law and due process under the Fourteenth Amendment of the United States Constitution: See *Furman v. Georgia*, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d., 346 (1972), separate opinions of Justices Douglas Brennan, White, Marshall and Stewart; and *City of Ashland v. Heck's Inc.*, Ky. 407 S.W.2d 421 (1966).

13. The fact that only very few of the eligible felony cases in juvenile court are subject to actual transfer proceedings is indicative of selective enforcement and an abuse of discretion.

14. The discretion given the District Court under KRS 208.170 cannot be used as an excuse for arbitrary and selective enforcement which results in due process and equal protection violations; See *Kent v. United States*, 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966).

15. Any law, even if it is non-discriminatory, on its face, may be applied in such a way as to violate the constitutional guarantee of equal protection; *Yick Wo v. Hopkins*, 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220 (1886).

16. According to statistics of the Jefferson County Department of Human Services, Office of Research and

Planning, from 1975-1979 69.4% of all case referrals to the juvenile justice system were referrals of white children while only 30.6% of the referrals involved black children. However, of the 56 case referrals to the Grand Jury from Juvenile Court during the same 5 year period 67.9% of the Grand Jury referrals concerned black juveniles while only 32.1% involved white juveniles.

17. The disproportionate impact of the application of KRS 208.170 is indicative of selective enforcement violating equal protection of the law with no reasonable explanation for the discrimiantion (sic) based on criteria or procedures used to obtain transfers of juveniles to the Grand Jury;

18. The defendant should be entitled to a hearing on the question of a transfer back to Jefferson District Court.

WHEREFORE, the defendant requests a hearing on the above-styled motion be set and, after such hearing, the defendant's case be transferred back to Jefferson District Juvenile Division.

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ORDER

Motion having been made and the Court being sufficiently advised,

IT IS HEREBY ORDERED that the defendant, Kevin Stanford, be transferred to Jefferson District Court, Juvenile Division, on all charges contained in the above-styled

indictment, for normal adjudication and dispositioanl (sic) proceedings in the juvenile system.

DATE

JUDGE, JEFFERSON
CIRCUIT COURT

NO. 81CR1218 JEFFERSON CIRCUIT COURT
DIVISION NINE

(title omitted in printing)

NOTICE-MOTION-ORDER

Notice Clause Omitted in Printing

MOTION TO SEVER DEFENDANTS

Comes the defendant, by counsel, pursuant to RCr 9.16 and moves this Court for a separate trial from his co-defendant, David Buchanan. In support of this motion the defendant notes the following:

1. That the co-defendant Buchanan has made statements implicating the defendant, which if introduced against Buchanan would unduly prejudice the defendant who would not be able to confront and cross-examine Buchanan;

2. Even if statements by Buchanan to the police are sanitized under authority of *Bruton v. United States*, 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968) conversations of Buchanan with other witnesses implicating the defendant may be introduced and will be extremely difficult, if not impossible, to sanitize;

3. The defendants will be presenting antogonistic defenses and evidence that may be used against Buchanan, but not admissible concerning Stanford alone, does in fact incriminate the defendant. See *Hopkins v. Commonwealth*, Ky. 374 S.W.2d 839 (1964) and *Tinsley v. Commonwealth*, Ky. 495 S.W.2d 776 (1973);

4. Since this is a capital case, there is the real danger of the jury, in a penalty phase, having to weigh the life of

each defendant against the other instead of deciding the fate of each separate defendant individually on the merits of the case against him alone;

AND

5. A joint trial would cause undue prejudice to the defendant Stanford.

WHEREFORE, the defendant moves this Court for an order requiring separate trial for each defendant.

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Unsigned, Tendered Order Omitted in Printing

NO. 81CR1218 JEFFERSON COUNTY COURT
DIVISION NINE

(title omitted in printing)

NOTICE-MOTION-ORDER

Notice Clause Omitted in Printing

MOTION TO EXCLUDE DEATH AS POSSIBLE PENALTY

Comes the defendant, by counsel, and moves this Court to issue an order excluding death as a possible penalty in the above-styled case. In support of this motion, the defendant notes the following:

1. The defendant was a juvenile, age 17, at the time of the commission of the offenses alleged in the above-styled indictment and was transferred to Circuit Court by Jefferson District Judge Richard Fitzgerald sitting as juvenile judge pursuant to KRS 208.170;

2. That the Commonwealth has indicated by the indictment and subsequent pleadings its desire to seek the death penalty in this case;

3. The death penalty as applied to one who was a juvenile at the time of the offense would violate Section 17 of the Constitution of Kentucky and would also violate the evolving standards of decency of this Commonwealth;

4. The death penalty as applied to one accused of a crime while a juvenile would further violate the Eighth Amendment of the United States Constitution as well as the evolving standards of decency of this nation;

AND

5. A memorandum of legal authorities supporting the defendant's position on this motion is attached and made a part of this pleading.

WHEREFORE, the defendant respectfull requests this Court to enter an order excluding the death penalty as a possible penalty in the above-styled case.

Certificate of Service Omitted in Printing
Unsigned, Tendered Order Omitted in Printing

Jefferson Circuit Court, Division Nine

(title omitted in printing)

ARGUMENT CONCERNING DEATH PENALTY; TESTIMONY OF JOHN METZLER AT PRE-TRIAL HEARING; TRANSCRIPT OF HEARING, 3-1-82, PP. 71-105

[71] MR. JEWELL: Your Honor, we also tendered a motion dealing with the doctrine of the Workman case which has been upheld twice and later by the Kentucky Supreme Court in which they refused to retreat from this holding both in the Anderson versus Commonwealth and in Friary versus Commonwealth. Also we have the new act of this legislature, which we concede does not go into effect until July of this year, but was passed during the 1980 session which would specifically exempt juveniles from the death penalty by statute. We feel that with this word from this legislature, in addition to the supreme Court holding in Workman addressing the issue of youth and saying that a stringent punishment like life without parole was to deal with only the incordial, we feel that death would be similar in that feeling in stating that incordialability is inconsistent with youth and they would not make that judgment twice having had the opportunity to have a reprieve from it and twice refusing [72] to do so, is guidance for this Court in dealing with the law of this Commonwealth.

THE COURT: Let me deal specifically with this other aspect to it. What exactly is the statute that's going to be effective July 1, 1982?

MR. JEWELL: Effective July 1, 1982, Kentucky Chapter 208 will be done away with as we know it now

dealing with juveniles, Kentucky will have what will be called the Kentucky Unified Juvenile Code which was passed by the 1980 session under Senate Bill 309, the effective date is July 1, 1982. In this code, 208-F.040 Subsection 1 provides that no youthful . . .

THE COURT: Read that a little bit slowly, please.

MR. JEWELL: Okay. KRS 208-F.040 Subsection 1 will provide that no youthful offender who has been convicted for a capitol offense should be sentenced to capitol punishment. The new code provides that youthful offenders or any person, regardless of age transferred to the Circuit Court from the Juvenile Court under the [73] provisions of the new unified code. I would cite 208-A.020 Subsection 40 and Juvenile Court would have jurisdiction, like they do now, of any person who commits a crime who is under 18. 208-A.0301. Therefore, any person who commits, for example, capitol murder, when they're under the age of 18 . . .

* * * * *

MR. JEWELL: Okay, your Honor, if we could bring the statute itself over at that time. It is printed in the new statute after the 1980 session with the warning on it that it's not effective until July 1, 1982.

THE COURT: All, right, what would be the effect that this case was [74] tried after July 1, 1982?

MR. JEWELL: If this case was tried after July 1, 1982, your Honor, I would think . . .

THE COURT: Is there a procedural statute that would be effective to this case?

MR. JEWELL: I believe there would be, your Honor, I think it would be procedural as to how we proceed up here, and how effective the trial would be, and I believe that it would be effective for this trial if this trial was set, say, July 2nd.

MR. JASMIN: Has counsel concluded?

MR. JEWELL: I have concluded with that.

MR. JASMIN: The Commonwealth's position with reference to retroactive application of the statute based upon 446.080 and it specifically says no statute shall be construed to be retroactive unless it's expressly so declared. Now, in 218-F, is that expressly declared that it would be applied retroactively?

[75] THE COURT: The problem is what's the definition of what's retroactive and what's not. Procedural statutes usually apply, not based on the time of the occurrence, but on the time of the procedure. If this is a procedural statute, then it seems to me that it would apply to any case tried after July 1, 1982.

MR. JASMIN: Well, the Commonwealth's position is, that we don't have to worry about whether it's procedural or not if it's a statute, because another statute specifically says that a statute cannot be construed retroactively and it doesn't specify . . .

THE COURT: Shall we dance around that pole again? The question is not whether statute should apply retroactively, the question is whether or not this is a procedural statute. A procedural statute does not apply retroactively, but it applies to the procedure ahead of it.

MR. JASMIN: I would agree with that, Judge. All I'm saying, is 446.080, regardless of the date says regardless [76] to the debate of procedure or substance says that unless the statute specifically indicates it is to be applied retroactively, it shall not be applied retroactively under Subsection 3.

THE COURT: Well, that doesn't answer my question, the question in my mind, Mr. Jasmin.

MR. JASMIN: Well, Judge, all the Commonwealth is saying is that there is nothing in the statute which talks in terms on how statutes are applied and they are talking about 218-F.

THE COURT: Do you agree that offenses committed by juveniles after July 1 of 1982, the death penalty would have no application?

MR. JASMIN: No, I would not agree to that as of this point, Judge, because there is some questions as to whether or not the situation is going to pass or going to go into effect.

MR. HECTUS: It's already passed.

MR. JASMIN: I know [77] that it's already passed. But, the person sponsoring is now in state legislature moving to knock it out.

THE COURT: It's already a law, you're saying it could be repealed.

MR. JASMIN: No. What I'm saying is, is that it is not a law which can be applied until June. What I'm suggesting to this Court is that it's not in effect now and

its sponsor, Maloney from Lexington, is moving currently that it be repealed.

MR. HECTUS: Your Honor, in my brief I did not cite the statute and I would like to adopt that part of Mr. Jewell's motion as to the statutory construction problem and furthermore.

THE COURT: I'm going to reserve judgment on that and take that under consideration. It seems to me this case ought not to turn on whether the case is tried before or after July 1, 1982. I'm more concerned about whether the statute, if it were being tried after July 1, 1982, would apply to this case or not.

* * * * *

[78] THE COURT: I don't, frankly, I don't, anticipate that, you know, that if the . . . if there is a reasonable probability that this statute could have application if the case was tried after July 1, 1982, that you fellows would want to move for a continuance.

MR. JEWELL: I'll be moving for a continuance today.

MR. JASMIN: Your Honor, so that we understand . . . so that I under- [79] stand what the Court is referring to, you are overruling the motion with reference to the death penalty until, but you want to look at 208-F, is that correct, and the anticipated statute which will come effective on July 1st?

THE COURT: I think that, Mr. Jasmin, is substantially correct. I'm not going to rule that the death penalty in an aggravated circumstance, if it's proved, is cruel punishment; nor am I going to rule it's cruel punishment

because it's applied to a 16 or 17-year-old as opposed to an 18-year-old.

MR. HECTUS: So you're distinguishing Workman and we'll read the statute, then?

THE COURT: Because I am concerned about whether . . . I'm going to reserve judgment on that one issue, and that's the one that bothered me the most when I was reading this material last night. It doesn't seem to me that the death penalty ought to turn on anything as gratuitous as whether this case is tried in March or July, [80] if such is the case.

MR. JASMIN: To clear the record then, you're saying the memorandum supplied by counsel for Buchanan, and where he says motion memorandum to exclude death penalty due to insufficient statutory guidance, that's been overruled, is that correct?

THE COURT: I'm overruling all of these motions relating to foreclosing the death penalty except the motion which is directed to the arbitrary and capricious nature or its application in this case because of or the possible arbitration as it applies in this case, because of the statute 208-F.02 Subsection 1. I'm going to reserve judgment on that and I think you'd better response (sic) to that.

* * * * *

Page 81 was deleted in printing

* * * * *

[82] THE COURT: Alll right. That takes care of all of those motions related to excluding the death penalty.

Now, what about the motion to transfer back to Juvenile Court?

MR. JEWELL: I have a motion, Judge, to that on behalf of Kevin

* * * * *

[83] MR. JEWELL: Okay, your Honor, as to that motion, I raised two basic grounds. One, quoting from the transfer order as well as having independent witnesses present and whether Kevin Stanford is treatable, does not meet unmediability to treatment. He is treatable within the facilities as cited in 208.170 and my second contention is that 208.170 is unconstitutionally applied in Jefferson County in that 16-year-olds who have felonies, all 14-year-olds who have Class A and B felonies are not given a hearing to determine whether or not they should come to Circuit Court, but only a few are given such hearing, [84] and this has resulted in the disproportionate waiver of black children as opposed to white children here to Circuit Court in Jefferson County. And, I have cited some statistics.

THE COURT: I saw your statistics.

MR. JEWELL: I have the man from the Statistics Department here today to testify.

THE COURT: All right, well, let's put him on and hear what he's going to say because the thing that is troublesome about your statistics, of course, is the transfer is related to the type of . . . a lot of different things, including whether the offense was against a person or property with greater penalties given to offenses against persons. The child's prior record, so I mean, it may well

be that the problem is related to a lot of other things other than raw statistics in terms of black/white. I don't know, whether statistics would do deference to your witness, can be very deceiving. I want you to inquire into that subject when you put your witness on. It he

* * * * *

[85] (WHEREUPON, John Metzler was sworn to tell the truth, the whole truth, and nothing but the truth, and testified as follows:)

DIRECT EXAMINATION

QUESTIONS BY MR. JEWELL:

1 Q Would you state your name and place of employment, please?

A John Metzler and I work for the Department of Human Services in Jefferson

* * * * *

[86] QUESTIONS CONTINUED BY MR. JEWELL:

2 Q Now, Mr. Metzler, what department do you work in for the Department of Human Services?

A I work in the office of Research and Planning.

3 Q Okay. What are the duties of the [87] office of Research and Planning?

A Okay, one of the duties of the office is to compile statistical information of the services done by DHS over the calendar year. And, it deals with both adults and juveniles, the statistical information, the agency is an umbrella agency.

4 Q Does your agency keep statistics relating to Juvenile Court, Jefferson District Juvenile Court?

A Yes, it does.

5 Q And do you keep these statistics as a normal part of the business of your department?

A Yes, we do.

6 Q I would ask you about some specific statistics now, I believe you've been subpoenaed to have some here, could you please state in the five-year period from 1975 through 1979 . . . well, first of all, let me ask you, do you have the 1981 and 1980 statistics compiled?

A Yes, we have the . . . okay, we do not have the 1981. We do have the 1980 statistics, I'll say compiled, but it hasn't [88] been available for public distribution yet. We've had problems, so it isn't actually in a report form to be distributed. The information is, however, available.

7 Q Okay. Let's take the statistics which we compile between 1975 and 1979.

A Okay.

8 Q Do you have statistics showing the total referrals to the juvenile justice system for that five-year period and the percentage according to race of the total number of referrals?

A Yes, I do.

9 Q What are the total number of referrals and the referrals per race with the percentages, please?

A Okay.

THE COURT: Are you talking about grand jury, too?

MR. JEWELL: No, this is for the Juvenile Court.

THE COURT: Oh, I see, the total referrals.

A Okay. In that five-year period there were 38,980 juvenile referrals of which [89] 27,066 were white. Did you want a percentage breakdown?

10 Q Yes.

A Twenty-seven thousand sixty-six were white referrals and that represented 69.4 percent of the total, and 11,914 or 30.6 percent were black referrals.

11 Q Okay. Now, do you also have broken down- . . . well, let me withdraw this question and ask you first, what is a referral? Would you explain referral to us?

A Okay. Basically a referral could be . . . it's an offense committed by a juvenile, referred to out agency one of two ways, either as a walk-on or through a police referral.

12 Q The numbers which you gave in response to my question of referrals, are not necessarily the numbers of individuals, correct?

A Correct.

13 Q That is correct?

A Correct, correct.

14 Q Because one person could have more than one referral?

[90] A Right, in the course of the calendar year, right.

15 Q I'd like to talk about the handling of the cases, do you have a statistical breakdown on this period, about how many of the total referrals were formally handled and how many of them were informally handled?

A Yes.

16 Q Could you give me percentages there?

A Yes, okay.

17 Q Along with the ratio breakdown, please?

A Okay. Okay, I'm not sure that I actually have . . .

18 Q Do you have the manner of handling by race in a year?

A I have the manner of handling, okay . . .

19 Q I believe it's a one-page document.

A Yes, there it is.

20 Q Okay, if you could give me . . . now, we know we have 27,066 white referrals. How many of those referrals were handled informally during that five-year period?

A Formally, I'm sorry?

21 [91] Q Informally.

A Ten thousand five hundred ninety-six of those twenty-seven thousand sixty-six white referrals were handled informally and that represents 39.1 percent.

22 Q And how many of the black referrals were handled informally during that same period?

A Okay, 3,228 of the 11,914 referrals were handled informally and that's 27.1 percent.

23 Q Okay. Could you explain what you mean in this statistic by informally?

A Yes. Informal is a case that is counselling, at what we call intake, what basically, based on prior history or severity of the charge, the juvenile comes to our agency and meets with a worker and the case is handled on an informal basis, and that is all the action that is taken.

24 Q Okay. So that case never gets to a formal Court hearing?

A Right, right.

25 Q Now, let's go, at this point, to grand jury referrals, please?

[92] A Okay.

26 Q I'd like to know, during this five-year period of time, the total number of grand jury referrals, and then also, a ratio breakdown of than number?

A Okay. During that five-year period there were 56 grand jury referrals, of which 18 or 32.1 percent were white and 38 or 66.9 percent were black.

27 Q Could you break these grand jury referrals down into charge or offense categories for us, please?

A Okay. Of that 56 grand jury referrals, 21 referrals or 37.5 percent were major property offenses. Two were what we call social control offenses, that represented 3.6 percent. Persons where physical harm was done, there

were 30 referrals and that represented 53.6 percent, and persons where no physical harm occurred, there were three referrals, which represented 5.4 percent.

28 Q Would you go now to a breakdown of that five-year period on some felony charges which I've asked you to bring with you today?

[93] A Okay.

29 Q First could you tell us the total referrals during a five-year period on homicides with ration breakdown and the percentages?

A All right. There were 54 homicide referrals during that five-year period, '75 through '79, of which 23 or 42.6 percent were white; 31 or 57.4 percent were black.

30 Q Okay, could you go now to the offense of rape, the number of rapes in that breakdown, please?

THE COURT: This is people handling these cases in Juvenile Court, right?

THE WITNESS: I'm sorry?

THE COURT: You're talking about cases handled altogether in Juvenile Court?

THE WITNESS: Right.

QUESTIONS CONTINUED BY MR. JEWELL:

31 Q These are referrals for these offenses, right?

A Right.

32 Q Could we go now to the offense of [94] rape, please?

A All right. In that five years there were exactly 100 referrals for rape, of which 53 or 53 percent were white; 47, or 47 percent were black.

33 Q And then in that period of years, I notice you have the category felonious sex offenses, do you also have that?

A Yes, yes. Should I . . . okay, is there any need for me to explain the reason why we don't have the other two years or anything like that? I didn't want our statistics to be in jeopardy or whatever.

34 Q How many years do have felonious sex assaults?

A Okay. We actually have felonious sex offenses for the years of '77, '78, and '79. Prior to those years, our coding mechanism did not distinguish between felonious and non-felonious sex offenses. I didn't want to report all sex offenses in this particular report.

MR. JASMIN: What was that number?

A During that three-year period, [95] there were 67 felonious sex offense referrals of which 411 or 61.2 percent were white; 26 or 38.8 percent were black.

35 Q Could we go to the offense next of robbery?

A Okay. During that five-year period again, there were 774 robbery referrals, of which 324 or 41.9 percent were white; 450 or 58.1 percent were black.

36 Q Could we go then to the offense of burglary?

A Once again, the five-year total there were 4,914 burglary referrals in that five-year period, of which 3,174

or 64.6 percent were white; 1,740 or 35.4 percent were black.

37 Q Could we go then to the category of assault and then in this category if you would include the years 1975 and 1976, aggravated assaults, and for '77 through '79 assault in the first and second degree, on the felony assaults?

A I'm afraid, Mr. Jewell, that I combined all five years in that.

38 Q Did you include any misdemeanor [96] assaults in this or is this all aggravated in the first and second degree?

A All of them are first and second degree.

39 Q So you have a five-year total for aggravated assault and first and second degree assault?

A Right.

40 Q Okay. If you could give us those statistics?

A All right, there were 726 assault referrals during that five-year period, of which 371 or 51.1 percent were white; 355 or 48.9 percent were black.

41 Q Would you then go to the offense of wanton endangerment, first degree, please?

A Okay, for that specific referral, I have only three years of data and that's '77 through '79. During that three-year period, there were 324 referrals for wanton endangerment in the first degree of which 200 or 61.7 percent were white; 124 or 38.3 percent were black.

42 Q Could you go to theft, including only theft over 100 and former grand larceny?

[97] A Okay. Well, for that five-year period, theft over $100.00 referrals, there were 2,375 of which 1,520 were white referrals; 855 or 36 percent were black referrals.

43 Q Then could you go to the offense of receiving stolen property over 100?

A Okay. Once again for that category I only have three years worth of information, and during that three-year period, there were 301 referrals for receiving stolen property over $100.00 of which 202 or 67.1 percent were white; 99 or 32.9 percent were black.

44 Q Okay. Mr. Metzler, did you break down grand jury referrals into specific charges? I know you broke them down into general categories, did you ever break them down into specific charges, or do you all have that information?

A I do not have it with me, I'm afraid.

45 Q Okay. Did you break down the offenses of homicide, at all, to what happened to all homicides that came into Juvenile Court?

[98] A Yes. I'm afraid I did not bring it with me, in the subpoena it wasn't requested, you mean disposition, correct?

46 Q Yes, homicide referrals . . .

THE COURT: Are you talking about grand jury?

MR. JEWELL: I'm talking abou. hat percentage of homicides . . . what percentage of homicides that went to the grand jury, we know the number which is eight, what happened to the others?

THE COURT: All right.

MR. JEWELL: There were 54 homicides that came into Juvenile Court, what I'm asking is if he brought the number of homicides that were waived to the grand jury?

A I did not.

47 Q Okay.

MR. JEWELL: I have no further questions, at this time, your Honor.

• • • • •

[99] CROSS EXAMINATION

QUESTIONS BY MR. JASMIN:

48 Q In those statistical breakdowns, with reference to those referred to the grand jury, did you make any distinction between age, as to age?

A They're all juveniles.

49 Q I know they're all juveniles.

A Not for this particular question, I could probably obtain it.

50 Q Well, sir, statistics refer to children who are 16 years of age or older?

THE COURT: They have to be 16 or 17.

THE WITNESS: Okay, right.

51 Q Do you have a breakdown, sir, which would indicate to me the number of children that came in 16 years of age or older and were waived to the grand jury?

[100] A I would have that information.

THE COURT: You have 54 homicides, we don't know whether those . . . anybody from theoretically three years old to 17.

A Right, right, right. We had 54 referrals. However, of the grand jury referrals, I'd have to, okay, assume that these grand jury referrals are gathered from Court documents and that, obviously, those referrals would not have been given unless they were 16 and 17 years old.

52 Q all right, in that instance, between the period 1975 to 1979, there were only 56, is that correct, sir, total 56?

THE COURT: Fifty-four referred from the grand jury.

MR. JASMIN: Now I'm talking about who were referred to the grand jury.

THE WITNESS: There were 56 referrals to the grand jury altogether.

THE COURT: Fifty-six of all kind.

MR. JASMIN: I under- [101] stand that.

THE COURT: Well, I know, I just want to be sure I do.

MR. JASMIN: All right, Judge.

QUESTIONS CONTINUED BY MR. JASMIN:

53 Q My question now is 1975 out of that total, how many blacks came to the grand jury and how many whites, for the year of 1975?

A I do not have that information.

54 Q You don't have that information for 1966?

A I do not have.

55 Q '77?

A No.

56 Q '78?

A No.

57 Q Or, '79?

A No.

58 Q And what I think is pertinent to us, sir, do you have any statistical breakdown which would indicate the number of blacks and whites who were referred to the grand jury with a prioy (sic) history in Juvenile [102] Court of burglary, robbery, arson, and subsequently committed murder, involved with a robbery, sodomy, and rape?

A No, your Honor. No, sir. Our reporting document is not that sophisticated to deal with prior actual histories of these delinquents. We did have information base on prior history the number of referrals that say that individual would have, but as to the severity of those reasons for the referral, we do not have that.

59 Q So now, out of those 56 who were waived to the grand jury, you can't tell us what the entire number of referrals or anything like that was, is that correct?

A Correct.

60 Q Your statistics would give no indication then what the background or whatever is?

A Off the top of my head, I could not say that we would have that information in terms of the severity of the charges. I think, we possibly do have prior histories and actual number of referrals, but I'd have to look through our data basis to see if [103] that was factual for sure.

61 Q And, you couldn't tell me out of the total number whether you are talking about informal or situations being handled informally, what I mean, is you don't have any breakdown as to how many of those persons were first-time offenders, is that correct?

A We would have that information.

62 Q You would have?

A Right.

63 Q But you don't have it here today?

A No, I don't. It was not requested.

64 Q All right. You can't tell me, sir, what total of those folks that came up, again it's a question, if I got your answer, who were charged with a combination of murder, robbery, and rape, sodomy in the first degree or kidnapping. correct?

A Correct.

65 Q Okay. And when you talked about your percentages in terms of all those who come in charged of doing this or that, you're talking about 53 . . . all of those were charged with doing physical harm was 53 or [104] 30 percent, or 53.6 percent was physical harm referrals, or 53.6 percent were physical harm, a category that has numerous classifications in it. We basically have five major classifications that we usually refer going by these classifications.

MR. JASMIN: So, in your breakdown do you show a breakdown between blacks and whites who were referred, you have nothing to show what the individuals previous history was, which in effect, triggered his coming up, is that correct, sir?

A As to actual offenses, correct. As to number of offenses, I believe we would have the information, but off the top of my head we would have, let's say, grand jury referrals, okay, if they were first offenders they had two to five referrals prior, ten referrals or more but not as to the actual severity of that referral, no.

THE COURT: You wouldn't know whether they were shoplifting or armed robbery?

THE WITNESS: Not in [105] our system. Obviously, the child's record, would contain that information.

66 Q You wouldn't have a breakdown that would say he was referred because he was out of control or was a truant, either, would you?

A No.

67 Q So your statistics can't tell us anything with reference to the severity of the offense and the true nature of the person's background?

A No.

* * * * *

[PETITIONER'S MOTION TO TRANSFER CASE BACK TO JEFFERSON DISTRICT COURT, JUVENILE DIVISION IS DENIED.

TRANSCRIPT OF HEARING, 3-1-82, PP. 180-184]

THE COURT:

• • • • •

The next thing is in dealing directly with the rest of your motion, very frankly, I considered that you all . . . I know that I'm supposed to consider the question separately from the District Court or at least that I'm entitled to exercise separate and different discretion than the District Court exercises, but it is quite evident that all of this testimony that I've heard today about transferring the case back to the Juvenile Court, is cumulative of what was said in the Juvenile Court and there's a very thorough going opinion that was written by Judge Richard Fitzgerald who's extremely knowledgeable on the subject of juveniles, from what I understand, I consider myself somewhat of a novice in applying the statute. I find it impossible to even understand where it says in the statute, if the Court determines that it is "in the best interest of the child and the community to order such a transfer, that the transfer will be made." I don't see how if it could ever be in the best interest of a child to be tried as an adult. I think the statute has to be determined to mean that the Court shall waive the best interest of the child and the best interest of the community. And then, decide in weighing both and considering all of the factors that are subsequently enumerated, that's how I interpret the statute.

MR. JASMIN: Are you referring to Subsection 3, Judge?

THE COURT: Yeah. How could it ever be in the best interest of the child to be tried as an adult, particular in a capitol case. The statute specifically colloquys in Subsection 1 that this will be done in capitol cases.

MR. JASMIN: Correct.

THE COURT: There isn't, I doubt the position is defensible, if you consider solely the best interest of the child that it could ever be in the best interest of the child to be given a sentence of capitol punishment.

MR. JASMIN: Judge, I would agree with you on the face of it, but the other thing that I would say is under Subsection 3, it lays out those items which are applicable.

THE COURT: That's what I say, I interpret it to mean that you simply weigh the best interest of the child and of the community, you consider all of these items that are subsequently listed and it's very obvious that Judge Fitzgerald considered every one of these items in great detail. I have now, both read his opinion and read your briefs and memorandums, and listened to this testimony, and I don't reach any different conclusions than he reaches, and that is, weighing all these factors that are listed, that I find that it is appropriate that these two accused be tried as adults. I think that in the best interest of the community and the factors that are listed are weighed, that it overweighs whatever interest the child has and when you consider these factors, the child's prior record in each case and the prospects for adequate protection of the public in each case, which is flim, the

likelihood of rehabilitation of the child, rehabilitation of the child by the usual procedures, services, and facilities currently available, through the juvenile justice system that Judge Fitzgerald made the finding that was compelled by the facts that were before him and I now make the same finding. So, I find that these children . . . I overrule your motion to transfer the case back to Juvenile Court. I found that these two accused should be tried as adults. So, that takes care of it, subject to whether all of the proper procedures and procedural steps have been totally followed in getting here.

[MOTION FOR SEPARATE TRIAL FROM CO-DEFENDANT, DAVID BUCHANAN IS OVERRULED; TRANSCRIPT OF HEARING, 3-1-82, PP. 184-186]

THE COURT: Yes, sir. Also, on the motion to sever, there is nothing stated in your motion to sever that I picked up that had any consequences except this is the kind of case which would ordinarily be tried together. I didn't pick up anything except this concern about the statements implicating a co-defendant that had any significance to it, and that's why I mentioned that we would apply the rule of the Bruton case that whatever statements are admitted so that that aspect is eliminated.

MR. JEWELL: The Bruton rule, we feel, Judge, could possibly easily apply to the case of the written statements taken by the police officers in the case of the statements related by other people as to what the co-defendants told them, which also implicates my client, I feel that's where we're going to run into big problems. For example, and I'm speculating here as to what might happen, let's say the Commonwealth calls the uncle of the co-defendant to the stand, who may say the co-defendant told me this and that, and he told me that Kevin did this and that. Well, I think we're going to have difficulty in telling the lay witness that your statements are to be Brutonized. We don't want you to say . . .

THE COURT: Well, that's going to be the Commonwealth's problem. If they don't succeed in doing it, well, they're going to have a mistrial. They're going to have to very carefully instruct every witness that a statement by the accused can only be used against that person, and it's hearsay as to some other person and that, of course, it

would be an awful thing to go through a trial and sequester the jury and have a mistrial, but most of the factors that would relate to a joint trial applying in this case, so I really don't see any reason why it would be appropriate to sever. Now, I think we've taken care of everything.

MR. JEWELL: So I take it the motion to sever is overruled, at this time?

THE COURT: Yes. That leaves, as far as I know, only the suppression hearing and the two points that we've reserved.

No. 82CR0406 JEFFERSON CIRCUIT COURT

DIVISION NINE

(title omited in printing)

ORDER

* * *

Motion having been made and the Court being sufficiently advised,

IT IS HEREBY ORDERED that the above-styled Indictment shall not be tried as a capital offense, but that the penalty for the charge of Murder shall be that of a Class A felony from 20 years to life.

Overruled
/s/ Charles M. Leibson
HON. CHARLES LEIBSON, JUDGE
JEFFERSON CIRCUIT COURT

June 30, 1982
DATE ENTERED

Jefferson Circuit Court, Division Nine

(title omitted in printing)

[DISCUSSION OF PENDING KENTUCKY LEGISLATION CONCERNING DEATH PENALTY; TRANSCRIPT OF HEARING, 3-8-82, PP. 9-10]

THE COURT: • • • • •

So, what it really comes down to, presumably, you fellows are going to ask for a continuance until after July 1, and what it really comes down to is that the case is going to get continued until after July 1, unless through some action of the legislature, this bill should be repealed. That's really what this comes down to, the bottom line. Now, I sure as the devil would like to know, if it was possible, before Friday. I almost think we ought to set a dead-line for Friday because we got 100 people subpoeaned to come in on Monday. Somebody ought to call those people and head them off, if the case is going to be continued.

MR. JASMIN: I agree with that I don't have any problem with that at all,

THE COURT: So, really that's about where we are on this, that's the bottom line,

MR. HECTUS: We'll go along with passing this until 8:30 Friday morning so we can all sort this out.

THE COURT: My problem is that I'm going to be out of town Thursday and Friday. It doesn't make any difference, you all will know by Friday whether this bill is . . . as far as I know, the it doesn't stay in session on Friday anyway, it goes home,

MR. JASMIN: On Friday evenings.

MR. HECTUS: If it doesn't, we will make our motion by Friday, anyway.

MR. JEWELL: Okay, we will go on the record and make a motion to continue at this time and ask the Court to take it under advisement until . . .

THE COURT: That's exactly what I'll do.

MR. HECTUS: I'll join in the motion.

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[20] NO. 81CR1218 JEFFERSON CIRCUIT COURT
NINTH DIVISION

(title omitted in printing)

ORDER

Comes the Defendant and the Commonwealth and moves the Court to continue this case and as grounds therefore, states as follows: By agreement case is reassigned to the date set out below, due to a decision pending in the legislative regarding the death penalty of juveniles.

Defense is not ready due to an exam of the defendant.

Defendants to report back in one week regarding the progress of the exam.

/s/ (Illegible)
Commonwealth Attorney

/s/ Franklin P Jewell
/s/ C Thomas Hectus
Defense Attorney

The Court being sufficiently advised, this case is continued to the 2 day of August, 1982, for trial.

/s/ Charles M. Leibson
CHARLES M. LEIBSON,
JUDGE

DATED: March 15, 1982

NO. 82CR0406 JEFFERSON CIRCUIT COURT
DIVISION NINE

(title omitted in printing)

NOTICE-MOTION-ORDER

Notice Clause Omitted in Printing

MOTION TO PROCEED AS CLASS A FELONY

Comes the defendant, by counsel, and moves this Court to enter an order that the above-styled indictment shall be tried as a Class A Felony as opposed to a capital offense. In support of this motion, the defendant notes the following:

1. Defendant, by counsel, has previously filed with this Court on or about February 25, 1982 a motion to exclude death as a possible penalty along with a memorandum in support of defendant's motion to exclude the death penalty, and on or about March 5, 1982 the brief pertaining to application of death penalty for juvenile crimes after July 1, 1982.

2. In ruling on these motions, the Court ruled that because of the passage of KRS 208F.040 with an effective date of July 1, 1982, the above-styled action could not be tried as a capital case if, in fact, KRS 208F.040 went into effect July 1, 1982.

3. The Court expressed reservations about ruling on the defendant's motion to exclude the death penalty based on the defendant's argument under Kentucky case law, specifically the case of *Workman v. Commonwealth*, Ky. 429 S.W.2d 374 (1968) and subsequent cases because the

Court felt it would be presumptious for it to rule on a constitutional issue at the time the motion was made.

4. KRS 208F.040, as well as the entire Kentucky Unified Juvenile Code, was given a new effective date by this session of the Kentucky General Assembly. The new effective date of the Kentucky Unified Juvenile Code including KRS208F.040, which would not allow the death penalty for any person who commits a crime under the age of 18, is July 1, 1984.

5. This new effective date was given because of financial difficulty with the implementation of the entire code.

6. Under the most recent case of *Smith v. Commonwealth*, KY., ___ S.W.2d ___ (29 KLS 7, p. 14, 1982), the Court has the power in any capital case to relieve the jury of any consideration of the death penalty. In that case, the Court would not allow the case to go into a penalty phase, even though the Commonwealth was seeking the death penalty, because the Court reasoned that it would be unconstitutional to give a "nontrigger man" the death penalty since the "trigger man" had received the minimum sentence of twenty years.

7. Since it now appears certain that a trial court may refuse to allow a case to be tried as a capital case, even though the Commonwealth claims aggravating circumstances, if the Court finds that the penalty would be disproportionate or that the penalty would be infirm in some other way, the defendant respectfully asks this Court to reconsider the merits of the defendant's arguments based upon the case law under *Workman v. Commonwealth, supra,* and subsequent cases and based upon

the fact that the Kentucky General Assembly is consistent in making its desires known that KRS 208F.040, which would exclude the death penalty to those committing crimes under the age of 18, shall become law of this Commonwealth within two years from the date that the above-styled action is set for trial. The defendant's position has been clearly stated in detail and its prior motion to exclude death penalty as possible punishment, its prior memorandum in support of defendant's motion to exclude the death penalty, and its prior brief pertaining to application of death penalty for juvenile crimes up to July 1, 1982.

WHEREFORE, relying on arguments previously stated to this Court, the defendant moves this Court under its discretionary power to relieve the jury of any consideration of the death penalty to proceed with this case as a Class A felony for which punishment for the charge of Murder would be 20 years to life.

Certificate of Service Omitted in Printing

NO. 82-CR-0406 JEFFERSON CIRCUIT COURT
DIVISION NINE (9)

COMMONWEALTH OF KENTUCKY PLAINTIFF

VS. *NOTICE-MOTION-ORDER*

DAVID BUCHANAN DEFENDANT

Notice Clause and Certificate of Service Omitted in Printing

MOTION TO DISMISS
CAPITAL PORTION OF INDICTMENT

Comes the defendant, David Buchanan, by counsel, and respectfully requests this Court to dismiss the capital portion of the indictment herein, and order that Ccount (sic) 1 (murder) be prosecuted as a Class A felony. As grounds therefore, defendant states as follows:

Troy Johnson also testified that there was no plan or intention to kill the victim:

Q: When did you see David on January 7?
A: In the late afternoon, in the morning.

Q: Where was he and where were you when you were together?

A: I went and picked him up.

Q: At his house?

A: Yes.

Q: And came over to where?

A: Old Third.

Q: But where did you go after you picked him up?

A: Back out to my brother's house.

Q: Okay and where is that located?

A: Out Newburg.

Q: How long were you kids together that day - that afternoon or whenever it was?

A: How long were we together?

Q: Uh-huh.

A: We were together all day.

Q: Okay, did you discuss anything with regard to the Checker Oil Station?

A: Yes.

Q: Answer the question.

A: Yes sir.

Q: What did you discuss?

A: How easy it was.

Q: How easy it was for what?

A: To rob it.

On cross-examination, Troy Johnson acknowledged that there was no plan to kill anyone:

Q: Alright, when David came to your house the day this happened isn't it true that when David asked you to get the gun that he assured you that nobody would get hurt?

A: Yes sir.

Q: So both you and David thought that the gun wasn't going to be used, isn't that true?

A: Yes sir.

Q: And as far as you knew and as far as David knew you were going out to rob the gas station according to your testimony?

A: Yes that's right.

Q: So David never spoke about anything else?

A: No sir.

Q: Especially shooting anybody?

A: Yes sir.

5. Recently, the United States Supreme Court held that a defendant found guilty of "felony murder" (i.e., what would amount to "wanton murder" in this Commonwealth) could not be constitutionally subjected to a sentence of death. In *Enmund v. Flordia*, ___U.S.___, ___ S.Ct. ___, ___ L.Ed.2d___ (July 2, 1982), the United States Supreme Court vacated Enmund's sentence of death because he was not the trigger man and did not have an intent to kill the robbery victim. The Supreme Court found that it was constitutionally impermissible under the Eighth Amendment to treat those who kill, in the same manner as those who neither kill nor intend to kill.

6. This court has the inherent authority to preclude the Commonwealth from submitting the case to the jury on the issue of capital punishment. Recently, the Supreme Court of Kentucky affirmed the action of this court in so doing. *Commonwealth of Kentucky v. William Bonnie Smith*, Ky., ___ S.W.2d ___ (June 15, 1982). In *Smith*, this Court found that it would be unconstitutional to sentence Smith, the "non-trigger man," to death since it would be disproportionate under the facts of that case. Recognizing that the ultimate sentencing power as to capital punishment lies with the trial court, and not the jury, the Kentucky Supreme Court stated that "[i]t therefore becomes self-evident that the court should not be required to

entertain an exercise in futility and preside over a hearing of any duration when it will ultimately decide, for as significant a reason as expressed in this record, that such recommendation by a jury would have been, in the trial court's opinion, 'disproportionate.' " *Smith, supra* at p. 5.

7. Defendant David Buchanan submits that to subject him to a sentence of death for an offense for which he was neither the trigger man nor had a shared intent to murder would be cruel and unusual punishment. Additionally, because, as to the offense of murder, David Buchanan does not stand in a significantly different position than that of Troy Johnson, who was committed to a Department for Human Resources boy's camp and since released, a sentence of death for David Buchanan would be disproportionate. Accordingly, to engage in a lengthy sentencing hearing, assuming arguendo that David Buchanan were convicted of murder, would be an exercise in futility because any sentence of death would be constitutionally impermissible.

WHEREFORE, defendant David Buchanan respectfully requests this Court to exercise its inherent authority and dismiss the capital portion of the indictment, and further, to direct the Commonwealth to proceed as to the murder count as a Class A Felony.

Signature Block Omitted in Printing

NO. 82-CR-0406 JEFFERSON CIRCUIT COURT
DIVISION NINE (9)

COMMONWEALTH OF KENTUCKY PLAINTIFF

VS. *ORDER*

DAVID BUCHANAN DEFENDANT

• • • • •

Upon motion of the defendant, and the Court being sufficiently advised,

IT IS HEREBY ORDERED that the capital portion of the indictment herein, be, and it hereby so, dismissed. It is further ordered that Count 1 (murder) be prosecuted as a Class A Felony.

/s/ Charles M. Leibson
HON. CHARLES LEIBSON, JUDGE
JEFFERSON CIRCUIT COURT
DIVISION NINE (9)

Comm. Has No Objection
(Handwritten Notation by Trial Judge)

DATE:_____

Entered in Court
July 28, 1982

[Reprinted from Original]

Handwritten Notation by Trial Judge

"Clerk - *Hold*
Entering this Order I want *Hearing tomorrow* on whether *only* ___ (illegible) is that *Buchanan non*-triggerman – What is ___ (illegible) of Troy Johnson as to circumstances of shooting??"
CML

[Reprinted from Original]

"Hearing Held - conceded by Com. Atty. that death penalty would be unconst. for Buchanan under *Enmund v. Fla.*"
CML

NO. 82CR0406 JEFFERSON CIRCUIT COURT
DIVISION NINE

(title omitted in printing)

NOTICE-MOTION-ORDER

Notice Clause Omitted in Printing

RENEWAL OF SEVERANCE MOTION

Comes the defendant, by counsel, and renews his previously made motion to sever defendants for trial under grounds cited in his previous motion, and additional grounds as follows:

1. Since the date the trial court overruled the defendant's initial motion to sever it has been determined that proceedings against the co-defendant shall not be capital in nature.

2. To make Stanford jointly try the case with Buchanan, whom the jury will know is not eligible for the death penalty would prejudice Stanford by putting him immediately in a bad light with the jury as the main actor in the crimes.

3. That there is great danger that the jury will consider in the sentencing phase in Stanford's case evidence introduced in the guilt phase which applied only to Buchannan.

4. Since the Court has ruled that the defense has only ten peremptory challenges between the two defendants Stanford will be denied a full set of challenges even though he must concern himself with the additional juror

question of whether that juror is more likely to give the death penalty.

5. In a joint trial there is also the possible danger that the jury will automatically consider death penalty for Stanford reasoning that he must be the worse of the two defendants because the other defendant is not eligible for the death penalty.

6. It is obvious that both the Commonwealth and the co-defendant Buchannan will attempt to paint Stanford as the "trigger man". To expect defendant Stanford to defend for his life on both fronts would place an unreasonable burden upon his defense and would severely prejudice his rights at trial and the only way in which the defendant Kevin Stanford can receive a fair trial for his life is to be tried separately and apart from the co-defendant David Buchannan.

WHEREFORE, the defendant moves this court to enter an order granting Kevin Stanford a trial separate and apart from the co-defendant David Buchannan.

Certificate of Service Omitted in Printing

NO. 82CR0406 JEFFERSON CIRCUIT COURT
DIVISION NINE

COMMONWEALTH OF KENTUCKY PLAINTIFF

VS. *ORDER*

KEVIN N. STANFORD DEFENDANT

* * *

Motion having been made and this Court being sufficiently advised,

IT IS HEREBY ORDERED that Kevin Stanford shall be tried separately and apart from David Buchannon.

IT IS FURTHER ORDERED that trial date for Kevin Stanford be set at 2nd day of August, 1982.

Overruled
/s/ Charles M. Leibson
JUDGE, JEFFERSON
CIRCUIT COURT

NO. 82CR0406 JEFFERSON CIRCUIT COURT

DIVISION NINE

(title omitted in printing)

NOTICE-MOTION-ORDER

Notice Clause Omitted in Printing

MOTION TO EXCLUDE POSSIBLE DEATH PENALTY AS A RESULT OF DENIAL OF DUE PROCESS

Comes the defendant, by counsel, and moves this Court to enter an order excluding possible death penalty in the above styled case as a result of the defendant having been denied due process by a previous order of this court excluding the death penalty for a co-defendant. In support of this motion the defendant notes the following:

1. That the defendant and co-defendant David Buchannan were both indicted for murder and other aggravating offenses under indictment no. 82CR0406.

2. That said indictment did not distinguish which one of the two individuals was the "trigger man".

3. Recently the court excluded the death penalty for the co-defendant David Buchannan based upon his status as the "non-trigger man".

4. This court's decision was based in part on pre-trial hearings as well as representations made by the commonwealth.

5. The decision as to which defendant, if either, actually committed the act of murder is a question of fact and therefore a jury question.

6. For the court to intervene before trial and make findings of fact binding at trial detrimental to this defendant denies him the due process of law.

7. The prejudice resulting from the court's pre-trial decision is that now Stanford will have to face a capital trial joined with a non-capital co-defendant, thus giving the jury the impression that Stanford is the more evil, the more deserving to die of the two and furthermore, under prior rulings by this court Stanford will have to share one set of jury challenges with the non-capital co-defendant, thus giving him only half of the actual challenges which he would normally have, even though he is the only one who will be concerned about challenges relating to the issue of the death penalty.

8. Stanford's right to have a jury determine all the facts surrounding his charges has been violated by the court's pre-trial ruling in reference to Buchannan thus making Stanford appear to be the major actor in the alleged crimes contrary to the allegations in the joint indictment.

9. To subject Stanford alone to the possible penalty of death deny him equal protection of the law, due process under the law and his right to a fair trial.

WHEREFORE, the defendant moves this Court to enter an order excluding death as a possible penalty.

Certificate of Service Omitted in Printing

NO. 82CR0406 JEFFERSON CIRCUIT COURT

DIVISION NINE

COMMONWEALTH OF KENTUCKY PLAINTIFF

VS.

ORDER

KEVIN N. STANFORD DEFENDANT

• • •

Motion having been made and this Court being sufficiently advised,

IT IS HEREBY ORDERED that the trial of the above-styled indictment in reference to Kevin N. Stanford shall proceed as a trial on a Class A Felony and possible penalty of death shall hereby be excluded.

"Overruled"

(s) Charles M. Liebson
JUDGE, JEFFERSON CIRCUIT COURT

Entered in Court
August 2, 1988

Jefferson Circuit Court, Division Nine

(title omitted in printing)

[ARGUMENTS AND RULINGS MADE AT TRIAL CONCERNING SEVERANCE AND DEATH PENALTY;]

[TRIAL TRANSCRIPT (TE), VOL. I, pp. 30-35]

[30] MR. JEWELL: Would it be advisable to go to Chamber's to discuss this matter?

THE COURT: No, we can have our bench conference out here and have enough privacy. Okay, this is another motion for excluding the death penalty with reference to Kevin Stanford.

MR. JEWELL: This motion is based upon and we still have one based upon Kentucky law and the new statute, but this one is because, as I understand it, the death penalty has not been excluded on this basis but because there's been factual evidence that he was the non-trigger man, in *Edmonson v. Florida*, I think it is . . .

THE COURT: Yes, sir.

MR. JEWELL: Well, we feel that ruling prejudices Stanford and the Court has made a [31] finding of fact which is that it is the province of the Jury and the mere fact now that we go to trial with Buchanan, who is not eligible for the death penalty, and the fact that Stanford being the only individual that is eligible for the death penalty under the same count, acting alone or in concert with another and the fact that we have to try them together, if the Jury sees only one eligible for the death penalty, we feel that that would prejudice the rights of Kevin Stanford in that he's already been determined to be most guilty or wrong.

THE COURT: Well, the Jury . . . I don't intend . . . unless somebody tells them . . . I don't intend to tell them . . . the Court has made a determination about that. All I intend to tell them in this case is that the defendant, Buchanan, is being tried with the possible penalty of life imprisonment and the defendant, Stanford . . . Buchannan is being tried in a non-capital case and Stanford is being tried in a captial (sic) case. This ruling was made after the Commonwealth Attorney made it clear and conceded in the argument that involved this very subject. He made a distintion that he was clearly taking the position . . . the legal position of the participation in this case, the participation being that Stanford was the trigger man and Buchanan was not. But, the Jury is not going to be caught up in that and they're not going to be told that the case is being tried in this posture because [32] the Court thinks that Stanford was the trigger man and Buchanan was not. They're not even going to be told that the case was ever indicted against Buchanan. They have . . . the Commonwealth has a right to try one person for a capital offense and not the other person. I've been through this and you have to have facilitation to robbery with another person who's charged with robbery and the Commonwealth has told me they're clearly intend, in this case, to take the position that Stanford was the trigger man and, that's why they're seeking the death penalty and Buchanan was not. I assume that that's the posture that the case will be presented to the Jury. No way do I intend for anybody to suggest that I have made the judgment that the one who's being tried as a trigger man . . . I'm not stating this very clearly, Frank, but I think you understand what I'm trying to say. I hope you do and I hope

Mr. Jasmin does. The Jury is being told that this case is being prosecuted against Buchanan as a life imprisonment case and being prosecuted against Stanford as a death penalty case; not that the Court is saying how the case should be prosecuted.

MR. JEWELL: Okay, our main problem with that was we felt that the ruling excluding the death penalty was basically improper. We thought the facts all should have been submitted and then instructions governing the facts; then, if the Jury, under the principal of complicity found that the death penalty should only apply [33] to Stanford, so be it. The only other thing, the ruling would be proper but we felt it invaded the factual province of the Jury in that regard.

THE COURT: Well that occurred to me after . . . last Monday after motion hour. I had Mr. Hectus and Mr. Buchanan . . .

MR. JASMIN: Jasmin.

THE COURT: Mr. Jasmin, you're prettier than Buchanan, anyhow. See, that's why I don't want to have that microphone on. I'm constantly prone to say something like that. Anyhow, you know, but that's besides the point. That's just a joke. At that hearing, Mr. Jasmin conceded very openly and to his credit, I mean, that he was definitely, positively taking a position, a legal position obviated the factor, and, his legal position is that as far as the Commonwealth is concerned, Stanford is the trigger amn (sic) and Buchanan is not. And, there is, of course, no way that that precludes from arguing the contrary. You can argue the contrary all you want. They have got the wrong guy, but that is the legal position of

the Commonwealth. It's a judgmental admission, if you please, that's been taken by the Commonwealth, that's why it's not an issue in the facts of this case.

MR. JASMIN: The Commonwealth's position is that all of the evidence we have is pointed to the fact that Kevin Stanford was the trigger man.

THE COURT: So, that's where [34] I'm at and I overrule your motion. I'm glad you put it up, not that the Court has made any judgments about who should be tried death penalty or non death penalty, but as expressed by the Commonwealth; again, Stanford for the death penalty because they consider him to be the trigger man and they are going to prosecute against Buchanan for life imprisonment because they do not consider him to be the trigger man.

MR. JEWELL: Okay, our problem is, if that is the case we felt it should have been decided in the penalty phase or on a motion of the Commonwealth to ammend (sic) . . . . a motion as opposed to Buchanan . . . a motion to exclude the death penalty based on factual issues.

THE COURT: Well, you're overruled. Cases are changed all the time. For example, every murder case is almost always charged as a capital case. Then, the Commonwealth has to come forward with aggravating circumstances then . . . even so, that doesn't apply here, then they change the case from a capital case to a non capital case.

MR. JEWELL: We have renewed our severence motin (sic) as well. We feel we prejudiced by having to try a capital case with a non capital co-defendant.

THE COURT: Mr. Jewell, I overruled you on that, too.

[35] MR. JEWELL: We also have one motion which the Court have under submission to exclude the death penalty based on the defendant's age which has not been finally ruled on.

THE COURT: I thought I had ruled on that.

MR. JEWELL: You remember you want to wait to see if the law is repealled (sic).

THE COURT: You're right, I told you how I was going to rule on it.

MR. JEWELL: And, now the law was merely delayed, so I filed a follow-up motion to that back in June and the Court took it under submission.

THE COURT: My position is that when the legislature moved that to 1984, that will be delayed then, too, in my opinion. So, you're overruled on that, too, the case will be tried as a capital case.

* * * * *

[PETITIONER'S RENEWED OBJECTION TO CASE PROCEEDING AS CAPITAL OFFENSE; PETITIONER'S TENDERING OF INSTRUCTIONS IN PENALTY PHASE AND OBJECTION TO TRIAL COURT'S INSTRUCTIONS.]

[TRIAL TRANSCRIPT (TE) VOL X, pp. 1365-1366]

MR. JEWELL: I need to get two things on the record, Judge. Let the record reflect our objection to the instructions and we have provided the Court Reporter with a copy of our tendered instructions marking what is given out of there plus we also renew our objections which we made throughout the trial as to trying the case as a capital case. I take it both of those are overruled?

THE COURT: Yes, overruled.

[RULING EXCLUDING TESTIMONY OF ROBERT JONES IN PENALTY PHASE OF TRIAL; AVOWAL TESTIMONY OF ROBERT JONES;]

[TRIAL TRANSCRIPT (TE) VOL. X, pp. 1483-1500]

[1483] THE COURT: What next, counselor?

MR. JEWELL: Your Honor, we would call Mr. Robert Jones.

(WHEREUPON, Robert Jones was sworn to tell the truth the whole truth and nothing but the truth and testifies as follows:)

(WHEREUPON, the following discussion was had at the bench out of the hearing of the Jury:)

MR. JEWELL: Your Honor, as with Mr. Davis, Mr. Jones is a former inmate of the criminal system. We would inform the court that the only conviction that he has is for robbery, is that correct, Robert?

[1484] MR. JONES: Yes, sir.

THE COURT: It's a robbery case from 1960?

MR. JONES: Right, 1960.

MR. JASMIN: There was one other conviction that was later set aside in Federal Court. That is the only conviction which he has remaining is that robbery conviction from 1960?

MR. JEWELL: Yes.

MR. JASMIN: Mr. Jones weren't you involved in a gas station robbery that was . . .

THE COURT: I'm not sure about that. That case wasn't tried in my courtroom and I don't know what the results of that case was.

MR. JEWELL: Mr. Jones has informed me of that and that Mr. Dawson represented him, and it is in the file which Mr. Dawson keeps.

THE COURT: I don't know what the disposition of that case was.

MR. JASMIN: I can't remember.

THE COURT: I'm going to declare a recess and suggest that you send somebody down to check with the Circuit Clerk's office to be sure about that. I don't think that either one of you wants to mislead the Jury.

WHEREUPON, Court was declared to be in recess at approximately 2:30 p.m. and the Jury retired to the jury room and Court continued as follows:)

THE COURT: Jurors, I'm going to have to ask you to retire to the jury room.

[1485] MR. JEWELL: Why don't you make your objection again?

MR. JASMIN: Your Honor, the Commonwealth feels that one of the reasons for calling this witness is to get information with reference to what it feels like to be on death row. The Commonwealth recognizes that fact that the possibility of rehabilitation is an issue in this case. The Commonwealth's position, however, is that we're only talking about rehabilitation and its possibilities as it relates to the defendant here on trial, Kevin Stanford, himself. We're not talking in terms of what has happened to other folk who might have been on death row or the situation in general.

THE COURT: Well, you're on death row after you have gotten the death penalty. Who are we to make a judgment as to what it feels like to be on death row. It's obviously not a part of it, not whether you should be on death row but how you should feel.

MR. JEWELL: Your Honor, I think that we should be allowed to develop, through Mr. Jones, that he, in fact, did receive the death sentence; that he did spend time on death row and I think the Jury has a right to know what they're being asked to do by giving this death penalty. They have a right to know that, Judge, still as we look at KRS . . .

THE COURT: Are you objecting to [1486] the relevancy of this coming in?

MR. JASMIN: Yes, Judge.

THE COURT: Well, I'm sustaining that objection. Can you get it in by avowal?

MR. JEWELL: About capital punishment based only on his opinion that, again the death penalty should . . .

THE COURT: You mean his philosophical opinion of whether the death penalty should be rendered?

MR. JEWELL: With his knowledge of Kevin Stanford.

THE COURT: The law says that the death penalty is legal. His position is that it should not be given. If that is his opinion that the death penalty should be outlawed, then I don't see . . .

MR. JEWELL: It will always be related why it's not appealing to him.

THE COURT: My mind's thinking is that I will sustain the objection to all of it. I will suggest that you call him and make an avowal.

MR. JEWELL: As to whether he thinks it's appropriate for Kevin Stanford?

THE COURT: Yeah. I don't think that Robert Jones has any . . . as a matter of fact, I have a lot of reservations, just because he's had a lot of [1487] personal experience with the criminal justice system by virture (sic) of the fact that he has been sentence to the death penalty and did spend time on death row, I don't think that qualified to speak on the subject.

MR. JEWELL: Your Honor, the other thing that's important is his specific work with juveniles. He has done work with Kevin, he has spend an amount of time with Kevin.

THE COURT: As I say, you can call him in and make him an avowal witness. If I hear anything in the avowal that makes me want to change my mine about, I will, but my reaction is to sustain objections to the entire line of questioning about that man's opinion about the subject. I don't know that he's qualified to express any opinions.

MR. JEWELL: We'd like to make an avowal on that before the Jury comes back, your Honor.

THE COURT: Okay. Bring him in and we'll make an avowal.

AVOWAL TESTIMONY GIVEN BY MR. ROBERT JONES:

QUESTIONS ASKED BY MR. JEWELL:

1 Q State your name, please?

A Robert Jones.

2 Q Okay. Where do you live, Mr. Jones?

A 535 Southwestern Parkway.

[1488] 3 Q Where are you employed, at this time, Mr. Jones?

A I'm a supervisor for the Mayor's Summer Youth Program.

4 Q Have you worked in other positions with juveniles and with young people?

A Yes, sir.

5 Q What positions were they, please?

A I was Assistant Director of the Juvenile Crime Program at the Urban House. I was a youth counselor at Children's Center. And, also, I was counselor at the inmates grievances and mechanism at the county jail.

6 Q How long have you worked in juvenile programs and with juveniles?

A Since 1975.

7 Q Okay. Do you hold any positions in any organizations dealing with the death penalty?

A I am the Vice-Chairman of the Kentucky Coalition against the death penalty.

THE COURT: The Kentucky what, sir?

THE WITNESS: With the Kentucky national alliance.

THE COURT: I'm sorry, I just didn't hear the full title of the association or whatever.

THE WITNESS: Okay, I said that the . . .

THE COURT: Vice-Chairman of what?

[1489] THE WITNESS: Of the Kentucky Coalition against the death penalty in the State of Kentucky.

THE COURT: Coalition?

THE WITNESS: Yes, sir.

THE COURT: Okay.

QUESTIONS CONTINUED BY MR. JEWELL:

8 Q And, what do your duties include in that area, sir?

A Part of my duties is to gather information as much as I possibly can concerning death penalty. I go to different states speaking out against capital punishment. A few months ago, I was in Washington, D.C. at a workshop concerning the death penalty.

9 Q Where all have you spoken in regards to the death penalty?

A I've spoken at many of the churches here in Louisville. I've spoken at the University of Kentucky. I spoke at Kentucky State. I spoked at University of Kentucky. I just got back from speaking at Southside High School in Huntingburg, Indiana. I also spoke at Daus

High School. And, also I spoke against capital punishment before the Kentucky House of Representatives in Frankfort, Kentucky.

10 Q Have you ever testified in a court of law in a death penalty case relating to your opinion as to the death penalty and its appropriatness (sic) in that case?

A Yes, sir.

[1490]11 Q Where did you so testify?

A Here in Louisville. I forget what Judge's court I was in but it happened about one year or two years ago.

12 Q Was that the Commonwealth versus Marvin Lewis?

A I'm not for sure.

13 Q Okay. And, sir, could you tell me your unique relationship with the death penalty?

A Well one of the problems that I see with the death penalty . . .

14 Q No, your relationship.

A My relationship.

15 Q How come you became interested in it and how come you know so much about it?

A Well, at one time, I was on death row myself.

16 Q When were you on death row?

A In 1961 and I was sentence to die on March 2nd, 1962 along w.th Kelly Moth, which he was the last man who was executed in this state.

17 Q Okay, now, sir, you are familiar, are you not, with Kevin Stanford?

A Yes, sir.

18 Q How are you familiar with Kevin Stanford?

A While I was working as a youth counselor at Children's Center, that's where I became acquainted [1491] with Mr. Kevin Stanford.

THE COURT: What was the time frame of your work, Mr. Jones?

MR. JONES: Sir?

THE COURT: What was the time framework, what year?

MR. JONES: '78 and '79.

QUESTIONS CONTINUED BY MR. JEWELL:

19 Q Have you spoken to him at any time since then?

A Yes, sir.

20 Q Did you speak to him at my request?

A Yes, sir.

21 Q When was this?

A Since he came back from Eddyville.

22 Q That was?

A Last week.

23 Q Within the month, correct?

A Yes, sir.

24 Q Okay. Now, Mr. Jones, I want to know your impression, based upon your working at the center, your conversations with Kevin, what problems you think he has that must be addressed and whether or not these can be addressed in the penal system?

A First thing, from my knowledge of Kevin, I feel that the adult institution probably is the proper [1492] place for Kevin to be. I feel that there is a lot of difference between juvenile facilities than there is in an adult facility.

25 Q Okay. You're aware that he's been at the juvenile facilities?

A Yes, sir. I feel that Kevin need to be in an adult institution where the rehabilitation program and the proper training is a lots greater than it is in the juvenile facilities. I think that Kevin need discipline. I think that that Kevin's biggest problem is the lack of discipline in his life as a youth. And, I truly feel that there is some other alternative besides executing 17, 18 year old boys.

26 Q Do you feel that. .why do you feel that that penalty would not be appropriate for him?

A Sir, I truly feel that the death penalty is not appropriate for anyone I guess because of my own personal experience that I've had. I am against capital punishment 1000% and I realize that even if Kevin was guilty of the crime, it's not going to bring the victim back. I feel that with his young age, that this man can be rehabilitated. And, if a 17 or 18 year old cannot be rehabilitated, then this is a failure in our correction department instead

of the individual. I said the same thing when they executed Judy over in Indiana. Even when I was in Washington, D.C., Coretta King, Martin [1493] Luther King's wife, she spoke out against capital punishment. Just like she said, her husband was assassinated, yet, they did not ask for the death penalty because they was against it. Her mother-in-law was assassinated and yet, they still oppose capital punishment. I know there's some type of peoples brings it up they comes up with the theory that the Bible says and eye for an eye. Well, like for Coretta Kings, says, if we had to live by that law, eye for an eye, we all would be blind today. I do not really understand our criminologies and our penologist and our of our socialologist, (sic) when we say that the only thing that we have to do to a 17 or 18 year old is to execute him. I feel that we have some other alternatuve (sic). I feel that this young man should be given this opportunity to place him in the Department of Corrections with the proper type of counseling. Now, I've heard that Kevin had a drug problem. There's no difference between a drug problem and an alcoholic problem. Either one that you use, it will give you artifical nerve. I'm really saying if this man is guilty, would he have committed the same identical acts if he was not on drugs or if he was not on alcohol? I am saying this from my own experience. I got into trouble because I would take me some drinks. I never used any drugs but I would take me some drinks to give me artifical nerve to do different things. And, this is still [1494] happening with the young people today.

27 Q Now, getting to Kevin, himself, Mr. Jones, from working with him and from your later discussion with

him, do you feel that Kevin is an individual that can be controled in the Department of Corrections?

A I can almost guarantee he will be controlled. There is no ands, if, Tom, Dick or Harry about that, Mr. Kevin will be controlled. I think when they send him to Eddyville to be down there for safe keeping for how long, or whatever, he should have been put out there in the population those days. Kevin would have been a brand new man right now. And, I'm saying that's where the system is a failure at. They give you . . . they call theirself giving you protection when they should have gone out there and exposed you to it.

28 Q Do you think being in the penal population and being with the population in a penal system will affect Kevin?

A Mentally, yes, sir.

29 Q How will it affect him?

A I feel that Eddyville will make him or break him. And, I feel with the type of program that they have at Eddyville that he'd never been exposed to in a juvenile facility, that this is another thing, he would have an opportunity to get a GED; he'd have an opportunity to get him a college education; he'd have an opportunity to [1495] get into so many type of vocational training and I think that this is what Kevin needs.

30 Q Okay. Now, sir, let me ask you another question about the death penalty; in connection with your studies of it; in connection with your position with the Kentucky Coalition and your lecturing, do you believe that the death penalty is a deterent?

A No, sir, No, sir. I do not.

31 Q Can you expand on that?

A Well, this is the same thing . . .

THE COURT: Counselor, in the interest of time, it might be that he could write a book on it.

MR. JEWELL: Your Honor, I want to get his whole testimony on by avowal since we can't have it in front of a Jury.

THE COURT: All right. That's a mighty big invitation when you say can you expand on the theory of penology.

MR. JEWELL: I understand that, Judge.

THE COURT: Can you say in three minutes or less or something like that?

MR JEWELL: Try and keep it to three minutes, Mr. Jones.

A Could you repeat you question, counselor?

[1486] THE COURT: He wants you to expand on why you do not thing (sic) the death penalty is a deterent?

A Well, this is the same thing that I said when WAVE called me one day, when they executed Gary Gilmore. They asked me did I think that this would stop crime? Since they have executed Gilmore, crime have not stand still, stood still; crime have not stopped; crimes has continued to go up and killing people have never stopped crime. Jesus Christ killed people everyday and

they still committing crime. How in the world, can a man kill another man and that's going to stop crime? Really, I don't feel that no man is fit to sit up and take another man's life no matter who he is, under what law. To give a man $100 to take a kid's life? That man is just as guilty as the defendant sitting there at the table. And, as I said before, executing a man in the gas chamber; putting a man in the gas chamber; putting a man before a firing squad will not stop crime and it has never stopped crime. And, we can go all the way back to our bibical days.

32 Q Do you think that the penal system . . . well, I'll withdraw that, we've asked that. Do you believe that Kevin Stanford, based on your experience with him and your discussions with him, is mature in his actions?

[1497] A No, sir. From talking to Stanford here, the other week, he really do not have, to me, the mentality to really realize the seriousness, although, he realize he has done wrong. But, I think there's more to it than to just realize I've done wrong. I don't think that it really has affected him to the extent that he really realizes the consequences. And, I've seen guys, from my own experience, that maybe get a life sentence in prison, and they may stay in there maybe six months to a year, before they realize, before it hit their minds that they got a life sentence to serve. And, I think Kevin is in this, he may have committed a crime but I just don't think that it really affecting him, the real seriousness of the crime that he's accused of today.

33 Q Do you think a life sentence would wake him up to that fact?

A The life sentence is going to wake him up and the maximum security environment will wake him up.

MR. JEWELL: Okay, thank you, Mr. Jones.

THE COURT: We think (sic) you very much, Mr. Jones, you're free to leave.

MR. JONES: Thank you, sir.

MR. JEWELL: May we approach the bench, your Honor?

[1498] THE COURT: Yes, sir.

(WHEREUPON, the following discussion was had at the bench out of the hearing of the Jury:)

MR. JEWELL: Can you ask him to wait in the hall?

THE COURT: You can retire to the hall, sir, in the event that you are called to testify in front of the Jury.

MR. JONES: Yes, sir.

MR. JASMIN: Your Honor, the Commonwealth is going to object on the basis that there is no basis for allowing a person to testify about his personal experience and personal opinions.

THE COURT: Right. I sustain the Commonwealth's objection.

MR. JEWELL: Your Honor, I would then ask that he be allowed to testify as to his opinion of Kevin Stanford and what his needs are, the man has worked with juveniles for over seven years.

THE COURT: I don't know that. He didn't state that at all.

MR. JEWELL: He said he had worked with juveniles for over seven years, for the Mayor's Summer Youth Program and as a counselor for the various programs of the state.

THE COURT: He may have spent that much time on the payroll, the only thing he has said as far as I know is that he has not had any training. I don't know what a counselor needs. There's been no showing that he's a social worker or psychologist or anything [1499] of the nature that relates that he's had any courses of any kind that would entitle him to express an opinion about whether this young man is rehabilitative or not. You have had a number of people who are social workers and who are psychologist, for example, Miss Luking and Mr. Mattison and some other people I believe. First of all, I don't know that he's qualified by any evidence that's been presented so far. Second of all, I rule that the evidence would be merely cumulative, at best.

MR. JEWELL: Your Honor, I don't want to be arguing with the Court but the man . . .

THE COURT: Well, you can be arguing all you want. It won't do you any good.

MR. JEWELL: You know, the man testified, Judge, he was a counselor at the Children's Center for Jefferson County and for the Urban House. He is experienced in juvenile problems, he is supervisor for the Children's Center right now.

THE COURT: Director of Coalition of something.

MR. JEWELL: Supervisor with the Mayor's Summer Youth Program, he testified that he was the director of juvenile crime program at the Urban House and he was a counselor at the detention center and I would think that would qualify a man on his past for working with youth and he has testified that he has worked with this young man.

THE COURT: I don't think . . . well, I don't know how much he's worked with . . .

[1500] MR. JEWELL: He just talked to him last week.

THE COURT: Talked to him last week.

MR. JEWELL: And he worked with him in '78 and '79.

MR. JASMIN: How long in '79? He did not bring up how long in '78 or '79. But, he did bring out that, at Mr. Jewell's request he talked to Stanford last week. He apparently went to the jail, Judge, and talked to him. We have nothing to show what this man credentials are.

THE COURT: So, I'm going to sustain the objection.

MR. JEWELL: Mr. Jones cannot testify as to any matters in this case?

THE COURT: I'm ruling that . . . I rule that all of what he testified to so far is in by avowal and that it will be precluded from testifying before the Jury. That's all I can deal with.

MR. JEWELL: Your Honor, we'll have to rest at this point.

* * * * *

NO. 82CR0406 JEFFERSON CIRCUIT COURT
DIVISION NINE

(title omitted in printing)

PROPOSED INSTRUCTIONS FOR PENALTY PHASE

* * *

INSTRUCTION NO.

INSTRUCTION AT BEGINNING OF HEARING

Ladies and gentlemen of the jury, you have tried the defendant and returned a verdict finding him guilty of Murder, _____ . From the evidence placed before you in that trial you are acquainted with the facts and circumstances of the crime itself. You will now receive additional evidence from which you shall determine whether there are mitigating or aggravating facts and circumstances bearing upon the question of punishment, following which you shall recommend a sentence for the defendant. In considering such evidence you will bear in mind the same instruction that was given to you in the first stage of this trial proceeding, to the effect that the law presumes the defendant innocent unless and until you are satisfied from the evidence beyond a reasonable doubt that he is guilty, and you shall apply that same presumption in determining whether there are aggravating circumstances bearing on the question of what punishment should be adjudged against him in this case. You are also instructed that even if you believe that the aggravating circumstances alleged have been proven beyond a reasonable doubt you may still nevertheless in your discretion recommend a sentence other than death. A finding that the aggravating factors do exist does not mean that you must give the death penalty to Kevin N. Stanford. The question of whether Kevin N. Stanford is put to

death is left in your discretion. In order to recommend the death sentence you must believe that at least one of the aggravating factors do exist beyond a reasonable doubt. However, you are not required to make any such specific findings if you return a verdict of punishment of a term of 20 years of more in the penitentiary or for a term of life in the penitentiary. You must consider all the evidence which is presented to you in this hearing. You do not have to make a unanimous finding of fact on any of the evidence unless you are recommending the death penalty in which you must unanimously find that one or more of the aggravating factors have been proven beyond a reasonable doubt and must unanimously agree on that punishment.

As with the trial in chief, the burden of proof herein lies with the prosecutor. The defendant is not required to testify and you cannot hold it against him if he chooses not to testify.

Pursuant to the verdict returned by you finding the defendant guilty of Murder, and under the evidence presented to you in both stages of this trial proceeding you shall recommend to the Court at the conclusion of your deliberations after this hearing one of the following three verdicts:

1. A term of 20 years or more in the penitentiary;

2. A term of life imprisonment in the penitentiary;

OR

3. Death by electrocution.

NO. 82CR0406 JEFFERSON CIRCUIT COURT
DIVISION NINE

(title omitted in printing)

DEFENDANT'S PROPOSED INSTRUCTIONS AT END OF PENALTY PHASE

* * *

Under the evidence presented to you in both stages of this trial proceeding you should recommend to the Court one of the following three verdicts:

1. A term of 20 years or more in the penitentiary;

2. A term of life imprisonment in the pentitentiary;

OR

3. Death by electrocution.

AGGRAVATING CIRCUMSTANCES

In recommending a sentence for the defendant you shall consider such of the following, if any, as you believe from the evidence beyond a reasonable doubt to be true:

a. That the offense of murder was committed while the offender was engaged in the commission of robbery in the first degree;

b. That the offense of murder was committed while the offender was engaged in the commission of sodomy in the first degree.

MITIGATING CIRCUMSTANCES

In recommending a sentence for the defendant you shall consider such mitigating or extenuating facts and circumstances as have been presented to you in the evidence and you believe to be true, including but not limited to such as the following as you believe from the evidence to be true:

a. That at the time of the offense Kevin Stanford was of a very youthful age in light of the fact that he was only 17 years old.

b. That at the time of the offense the capacity of Kevin Stanford to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect, even though the impairment of the capacity of Kevin Stanford to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was insufficient to constitute a defense to the crime.

c. That at the time of the offense the capacity of Kevin Stanford to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of intoxication by alcohol and/or drugs.

d. That the offense was committed while Kevin Stanford was under the influence of extreme mental or emotional disturbance even though the influence of such extreme mental or emotional disturbance is not sufficient to constitute a defense to the crime.

e. That the circumstances surrounding the entire incident left the defendant acting under duress, even

though such duress is not sufficient to constitute a defense to the crime.

f. That Kevin Stanford was led into the crime by another person even though the domination ofthe other person was not sufficient to constitute a defense to the crime.

g. That Kevin Stanford is emotionally immature.

h. Kevin Stanford is not a leader but is a follower of other people's actions.

i. That Kevin Stanford is capable of being rehabilitated.

j. That Kevin Stanford has had a long standing drug problem which has influenced his behavior.

k. That Kevin Stanford still suffers from emotional neglect as a young child.

l. That Kevin Stanford has been unable to develop sufficient loving relationships in his youth or later life.

m. That Kevin Stanford as a young child was unable to establish sufficient bonding relationships.

n. That Kevin Stanford is in need of long term psychotheraputic intervention.

o. That Kevin Stanford is further in need of reality based therapy for socialization purposes.

p. Kevin Stanford could benefit from drug therapy available in the Department of Corrections.

q. That Kevin Stanford has not had meaningful or appropriate theraputic intervention as of yet.

r. That Kevin Stanford presently has a small child whom he loves very much.

s. That because of his age Kevin Stanford is capable of changing and of benefiting from rehabilitative programs.

t. Kentucky Department of Corrections has rehabilitative programs which could be made available to Kevin Stanford.

AUTHORIZED SENTENCES

You may recommend that the defendant be sentenced to:

a. Confinement in the penitentiary for a term of 20 years or more;

b. Confinement in the penitentiary for life

OR

c. Death by electrocution in your discretion.

You cannot recommend that he be sentenced to death unless you are satisfied from the evidence beyond a reasonable doubt that at least one of the statements listed in Instruction ___, Aggravating Circumstances is true in its entirity, in which event you must designate in writing, signed by the foreman, which of the aggravating circumstances you found beyond a reasonable doubt.

You are further instructed that a sentence of life or term of 20 years imprisonment or more can be returned even if you believe the number of aggravating circumstances are greater than the number of mitigating circumstances, or even if you believe that no mitigating circumstances exist.

NO. 82CR0406 JEFFERSON CIRCUIT COURT
DIVISION NINE

(title omitted in printing)

DEFENDANT'S PROPOSED INSTRUCTIONS AT END OF PENALTY PHASE

* * *

INSTRUCTION NO.

REASONABLE DOUBT

If you have a reasonable doubt as to the truth or existence of any one of the aggravating circumstances you shall not make a finding with respect to it. If upon the whole case you have a reasonable doubt as to whether the defendant should be sentenced to death you shall recommend a sentence of imprisonment instead. Even if you believe the aggravating circumstances exist beyond a reasonable doubt you are not bound to return a finding of death. You are free in you discretion to give Kevin Stanford the benefit of life in prison or imprisonment of not less than 20 years in your discretion. A return of a sentence of imprisonment does not require any finding by you concerning any mitigating circumstances but may be made solely in your discretion. You are further instructed that Kevin Stanford is not required to testify in the penalty phase hearing. His election not to testify cannot be construed as having any weight against him, nor shall you consider that fact against him.

NO. 82CR0406 JEFFERSON CIRCUIT COURT
DIVISION NINE

(title omitted in printing)

DEFENDANT'S PROPOSED INSTRUCTIONS AT END OF PENALTY PHASE

* * *

INSTRUCTION NO.

UNANIMOUS VERDICT

The verdict must be unanimous and signed by one of you as foreman. If you make the recommendation of death, you must also be unanimous in your finding of the aggravating circumstances.

NO. 82CR0406 JEFFERSON CIRCUIT COURT
– DIVISION NINE

(title omitted in printing)

VERDICT FORMS

* * *

A. *TERMS OF YEARS*

We the jury recommend that the defendant, Kevin N. Stanford, be sentenced to confinement in the penitentiary for a term of _____ years.

_____
FOREMAN

B. *LIFE IMPRISONMENT*

We the jury recommend that the defendant, Kevin N. Stanford, be sentenced to confinement in the penitentiary for life.

_____
FOREMAN

C. *DEATH*

We the jury recommend that the defendant, Kevin N. Stanford, be sentenced to death by electrocution.

_____
FOREMAN

We the jury further find the following aggravating circumstance to be true:_____ .

We the Jury also find that the following mitigating factors existed (you may refer to the mitigating factors by the letter designation given in the instruction) _____ .

We the jury futher find that these mitigating factors do not exist (you may refer to the mitigating factors by the letter designation given in the instruction) _____ .

_____
FOREMAN

_____

NO. 82CR0406 JEFFERSON CIRCUIT COURT
NINTH DIVISION

(title omitted in printing)

JURY INSTRUCTIONS

* * *

Ladies and Gentlemen of the Jury:

You have tried the defendant, Kevin Stanford, and have returned a verdict finding him guilty of murder. From the evidence placed before you in that trial you are acquainted with the facts and circumstances of the crime itself. You will now receive additional evidence from which you shall determine whether there are mitigating or aggravating facts and circumstances bearing upon the question of punishment, following which you shall recommend a sentence for the defendant. In considering such evidence as may be unfavorable to the defendant, you will bear in mind the same instruction that was given to you in the first stage of this trial proceeding, to the effect that the law presumes a defendant innocent unless and until you are satisfied from the evidence beyond a reasonable doubt that he is guilty, and you shall apply that same presumption in determining whether there are aggravating circumstances bearing on the question of what punishment should be adjudged against him in this case.

Pursuant to the verdict returned by you finding the defendant guilty of murder, and under the evidence presented to you in both stages of this trial proceeding, you shall recommend to the court in you discretion one of the following three verdicts:

(1) A term of twenty (20) years or more in the penitentiary;

(2) A term of life imprisonment in the penitentiary;

OR

(3) Death.

INSTRUCTION NO. I – AGGRAVATING CIRCUMSTANCES

In recommending a sentence for the defendant you shall consider such of the following as you believe from the evidence beyond a reasonable doubt to be true:

(a) That at the time he killed Baerbel Poore the defendant was engaged in a robbery of Cheker Oil Station, 4501 Cane Run Road, and that in the course of so doing and with intent to accomplish the robbery in the first degree he was armed with a pistol;

OR

(b) That at the time he killed Baerbel Poore the defendant was engaged in deviate sexual intercourse with Baerbel Poore and that he did so by forcible compulsion.

INSTRUCTION NO. II – MITIGATING CIRCUMSTANCES

In recommending a sentence for the defendant you shall consider such mitigating or extenuating facts and circumstances as have been presented to you in the evidence and you believe to be true, including but not limited to such of the following as you believe from the evidence to be true:

a. That at the time of the offense Kevin Stanford was of a very youthful age in light of the fact that he was only 17 years old.

b. That at the time of the offense the capacity of Kevin Stanford to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect, even though the impairment of the capacity of Kevin Stanford to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was insufficient to constitute a defense to the crime.

c. That at the time of the offense the capacity of Kevin Stanford to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of intoxication by alcohol and/or drugs.

d. That the offense was committed while Kevin Stanford was under the influence of extreme mental or emotional disturbance even though the influence of such extreme mental or emotional disturbance is not sufficient to constitute a defense to the crime.

e. That the circumstances surrounding the entire incident left the defendant acting under duress, even though such duress is not sufficient to constitute a defense to the crime.

f. That Kevin Stanford was led into the crime by another person even though the domination of the other person was not sufficient to constitute a defense to the crime.

g. That Kevin Stanford is emotionally immature.

h. That Kevin Stanford is not a leader but is a follower of other people's actions.

i. That Kevin Stanford is capable of being rehabilitated.

j. That Kevin Stanford has had a long standing drug problem which has influenced his behavior.

k. That Kevin Stanford still suffers from emotional neglect as a young child.

l. That Kevin Stanford has been unable to develop sufficient loving relationships in his youth or later life.

m. That Kevin Stanford as a young child was unable to establish sufficient bonding relationships.

n. That Kevin Stanford is in need of long term psychotheraputic intervention.

o. That Kevin Stanford is further in need of reality based therapy for socialization purposes.

p. That Kevin Stanford could benefit from drug therapy available in the Department of Corrections.

q. That Kevin Stanford has not had meaningful or appropriate theraputic intervention as of yet.

r. That Kevin Stanford presently has a small child whom he loves very much.

s. That because of his age Kevin Stanford is capable of changing and of benefiting from rehabilitative programs.

t. That Kentucky Department of Corrections has rehabilitative programs which could be made available to Kevin Stanford.

In addition to the foregoing, you shall consider also those aspects of the defendant's character and record, and those facts and circumstances of the particular offense of which you have found him guilty, about which he has offered evidence in mitigation of the penalty to be imposed upon him and which you believe from the evidence to be true.

INSTRUCTION NO. III – AUTHORIZED SENTENCES

You may recommend that the defendant be sentenced (a) to confinement in the penitentiary for a term of twenty (20) years or more; (b) to confinement in the penitentiary for life; or (c) to death, in you discretion, but you cannot recommend that he be sentenced to death unless you are satisfied from the evidence beyond a reasonable doubt that at least one of the statements listed as (a) and (b) in Instruction No. I (Aggravating Circumstances) is true in its entirety, in which event you must designate in writing, signed by the forman, which of the aggravating circumstances you found beyond a reasonable doubt to be true.

You are further instructed that a sentence of life or term of twenty (20) years imprisonment or more can be returned even if you believe the number of aggravating circumstances are greater than the number of mitigating circumstances, or even if you believe that no mitigating circumstances exist.

INSTRUCTION NO. IV – REASONABLE DOUBT

(a) If you have a reasonable doubt as to the truth or existence of any one of the "aggravating circumstances" listed in instruction No. I, you shall not make any finding with respect to it.

(b) If upon the whole case you have a reasonable doubt whether the defendant should be sentenced to death, you shall recommend a sentence of imprisonment instead.

INSTRUCTION NO. V – UNANIMOUS VERDICT

The verdict must be unanimous and signed by one of you as foreman. If you make the recommendation of death, you must also be unanimous in your finding of the aggravating circumstances.

/s/ Charles M. Leibson
Aug 12 - 1982

To be completed if the sentence is death:

We, the Jury, find the following to be true: (Enter a statement of one or more of the circumstances listed in Instruction No. ___).

That at the time he killed Baerbel Poore the defendant was engaged in a robbery of Cheker Oil Station, 4501 Cane Run Road, and that in the course of so doing and with intent to accomplish the robbery in the first degree he was armed with a pistol and that at the time he killed Baerbel Poore the defendant was engaged in deviate sexual intercourse with Baerbel Poore and that he did so by forcible compulsion.

[The foregoing is a handwritten notation of the jury forman.]

(s) Charles B. Cornish
FOREMAN

We, the Jury, recommend that the defendant, Kevin Stanford, be sentenced to death.

(s) Charles B. Cornish
FOREMAN

August 13, 1982
Date

[Verdict Forms – Reprinted from Original]

[Backside of Verdict Forms – TR 82CR0406, 314]

(Roll call vote on the verdict of punishment on 11:44 a.m.

August 13, 1982 – Death Penalty).

Alice Eichenberger
Mary Ellen Mitchell
Donald L. Romans
Hazel Miles
Robert Sands
Charles Kelly
Franklin N. Sabol
Darren Adkins
Donald M. Black
Ethel V. Zimmerer
Charles B. Cornish
Mary Ann Quaife

[The foregoing is a handwritten roll call vote that was signed by each juror.]

[Roll Call Vote and Signatures of Jurors – Reprinted from Original]

NO. 82CR0406 JEFFERSON CIRCUIT COURT
DIVISION NINE

(title omitted in printing)

NOTICE-MOTION-ORDER

Notice Clause Omitted in Printing

MOTION TO REDUCE SENTENCE OF DEATH TO LIFE IMPRISONMENT OR A TERM OF YEARS

Comes the defendant, by counsel, under KRS 532.025(1)(b) and *Smith v. Commonwealth*, Ky., 634 S.W.2d 411 (1982) and moves this Court to enter a sentence of life imprisonment or a term of years not less than twenty (20) years. In support of this motion the defendant notes the following:

1. A recommendation of death by the jury is not binding upon the trial judge. *Smith v. Commonwealth*, Ky., 634 S.W.2d 411 (1982).

2. The Court may in its discretion sentence the defendant to a term of years not less than twenty (20) or to life imprisonment.

3. The recommendation of the jury in this case was not and should not be construed as a voice of the total community. The defendant had previously moved not to death qualify the jurors as it deprived him of a valid cross-section of the community but was overruled on this point, therefore the jury which tried Kevin Stanford was composed of only those members of the community who believed in the impositon of the death penalty. Therefore

their recommendation cannot be taken as a recommendation of the entire community, a large segment of which does not believe in the imposition of the death penalty.

4. With the alternative of lengthy incarceration up to and including life in the penitentiary there is no valid reason that Kevin Stanford must die while his co-defendant who was also found guilty under an intentional murder instruction is allowed to live.

5. The application of the death penalty in this case would be capricious and arbitrary when compared to other cases involving possible death sentences.

6. The defendant is still a very young man, these crimes having occurred when he was age 17. Therefore the defendant could have a great number of years in which he could be rehabilitated, including years that are usually ones of change in many people.

7. A person as young as Kevin Stanford should not be considered so far beyond redemption that the only alternative left to a civilized society is to put him to death.

8. The death penalty historically has been, and still is, applied in a capricious fashion which results in discrimination based upon both class and race. An example is seen in the State of Kentucky in that between 1911 and 1962-170 persons were executed in the State of Kentucky and 92 of these persons, or roughly 53% were black. These statistics were gathered by the Kentucky Office of Public Advocacy from records of statistics kept by the Department of Corrections. As of June 20, 1982 over 42% of the prison death row population in this country were

black according to statistics gathered by the NAACP Legal Defense Fund.

9. The sentence of death is so cruel and unusual that according to statistics gathered by the NAACP Legal Defense Fund since January 1 of 1973 the number of suicides on death row have exceeded the number of executions in this country. According to the statistics since January 1, 1973 up through June 20, 1982 there were 4 executions and 8 suicides of persons under the death sentence.

And

10. In light of Kevin Stanford's age, in light of the fact that only he was ruled eligible for the death penalty of three persons charged with the same offense, in light of the cruelty of the death penalty, and in light of the mercy with which this Court should govern it is requested that Kevin Stanford's life be spared by this Court and the order tendered herewith signed by the Court.

WHEREFORE, the defendant moves this Court to enter the attached order reducing the sentence of Kevin Stanford from death to prison sentence in the discretion of this court.

Certificate of Service Omitted in Printing
UNSIGNED, TENDERED ORDER
OMITTED IN PRINTING

NO. 81 CR 1218
82 CR 0406

JEFFERSON CIRCUIT COURT
NINTH DIVISION

(title omitted in printing)

FINAL JUDGMENT

The defendant at arraingment having entered a plea of not guilty to the following charges included within the indictment; Count 1, Murder, Count 2, Robbery I, Count 4, sodomy I and Count 5, Receiving Stolen Property Over $100.00 and having on the 2nd day August, 1982, appeared in open court with his attorney the case was tried before a jury which returned the following verdict on the 12th day of August, 1982: *VERDICT NO. 2*, WE, THE JURY, FIND THE DEFENDANT, KEVIN STANFORD, GUILTY OF MURDER – INTENTIONAL UNDER INSTRUCTION NO. I. /S/ CHARLES B. CORNISH, FOREMAN. *VERDICT NO. 8*, WE, THE JURY, FIND THE DEFENDANT, KEVIN STANFORD, GUILTY OF ROBBERY IN THE FIRST DEGREE UNDER INSTRUCTION NO. IV AND FIX HIS PUNISHMENT AT CONFINEMENT IN THE PENITENTIARY FOR 20 YEARS, (CONSECUT SENTENCE WITH ANY OTHER PRISON SENTENCE). /S/ CHARLES B. CORNISH, FOREMAN, *VERDICT NO. 10* WE, THE JURY, FIND THE DEFENDANT, KEVIN STANFORD, GUILTY OF SODOMY IN THE FIRST DEGREE UNDER INSTRUCTION NO. V AND FIX HIS PUNISHMENT AT CONFINEMENT IN THE PENITENTIARY FOR 20 YEARS, (CONSECUTIVELY TO BE SERVED WITH ANY OTHER SENTENCE). /S/ CHARLES B. CORNISH, FOREMAN. *VERDICT NO. 12*, WE, THE JURY, FIND THE DEFENDANT, KEVIN STANFORD, GUILTY OF RECEIVING

STOLEN PROPERTY OVER $100.00 UNDER INSTRUCTION NO. VI AND FIX HIS PUNISHMENT AT CONFINEMENT IN THE PENTITENTIARY FOR 5 YEARS, (CONSECUTIVELY SERVED). /S/ CHARLES B. CORNISH, FOREMAN.

After the jury returned the above verdicts on the defendant the court informed the jury of another phase of trial that they needed to proceed with, that being the Death Penalty Phase. All evidence having been heard for this part of the trial, the jury returned in open court with the following verdict: WE, THE JURY, FIND THE FOLLOWING TO BE TRUE: THAT AT THE TIME HE KILLED BAERBEL POORE THE DEFENDANT WAS ENGAGED IN A ROBBERY OF CHECKER OIL STATION, 4501 CANE RUN ROAD AND THAT IN THE COURSE OF SO DOING AND WITH INTENT TO ACCOMPLISH THE ROBBERY IN THE FIRST DEGREE HE WAS ARMED WITH A PISTOL; AND THAT AT THE TIME HE KILLED BAERBEL POORE THE DEFENDANT WAS ENGAGED IN DEVIATE SEXUAL INTERCOURSE WITH BAERBEL POORE AND THAT HE DID SO BY FORCIBLE COMPULSION. /S/ CHARLES B. CORNISH, FOREMAN. WE, THE JURY, RECOMMEND THAT THE DEFENDANT, KEVIN STANFORD, BE SENTENCED TO DEATH. /S/ CHARLES B. CORNISH, FOREMAN.

At a hearing held on August 31, 1982, the defendant, in person and by counsel made a motion for a new trial and judgment notwithstanding the verdict, evidence being heard the Court being sufficiently advised hereby ORDERS that the motion be and hereby is overruled.

On the 24th day of September, 1982, the defendant appeared in open court with his attorney, Frank Jewell and Jim Shake, and the court inquired of the defendant and his counsel whether they had any legal cause to show why judgment should not be pronounced, and afforded the defendant and his counsel the opportunity to make statements in the defendant's behalf and to present any information in mitigation of punishment, and the court having informed the defendant and his counsel of the factual contents of said report with the exceptional (sic) of the official version which the defendant denies.

Having given due consideration to the written report of the Division of Probation and Parole, and to the nature and circumstances of the crime, and to the history, character and condition of the defendant, the court is of the opinion that imprisonment is necessary for the protection of the public because:

A. there is a substantial risk that the defendant will commit another crime during any period of probation or conditional discharge.

B. the defendant is in the need of correctional treatment that can be provided most effectively by the defendant's commitment to a correctional institution.

C. probation or conditional discharge would unduly depreciate the seriousness of the defendant's crime.

No sufficient cause having been shown why judgment should not be pronounced, IT IS HEREBY ORDERED AND ADJUDGED BY THE COURT that the

defendant is guilty of Count 2, Robbery in the First Degree, and is sentenced to 20 years in the penitentiary; on County 4, Sodomy in the First Degree, the defendant is sentenced to 20 years in the penitentiary; on Count 5, Receiving Stolen Property Over $100.00, the defendant is sentenced to 5 years in the penitentiary. These three sentences are ORDERED served Consecutively for a total of 45 years in the penitentiary.

From the circumstances of the present crime and the history of Kevin Stanford, the Court concludes that the defendant, Kevin Stanford is beyond rehabilitation. There is no reasonable possibility that he could be rehabilitated by any type of program, with or without lengthy incarceration. Therefore, the death penalty will be imposed.

On Count 1 of the indictment, Murder, the jury has recommended a death sentence. In the circumstances of this case, no other sentence would be appropriate. Therefore, the motion to reduce the sentence of death to life in prison or term of years, is denied.

The defendant, Kevin Stanford, on Count 1 of the indictment, the charge of Murder, is sentenced to death.

The defendant shall be taken by the Sheriff of Jefferson County and commited to the custody of the Department of Corrections, to be held as such location as the Department shall designate. This Court is required by Criminal Rule 11.04 to set a day for the execution of the death sentence, which shall be on Friday, October 29, 1982.

Pursuant to KRS 431. 220, the death sentence shall be executed by causing to pass through the body of the defendant, Kevin Stanford, a current of electricity of sufficient intensity to cause death as quickly as possible. The

application of the current shall be continued until the defendant is dead.

IT IS FURTHER ORDERED AND ADJUDGED that the defendant is hereby credited with time spent in custody prior to sentence, namely 343 days as certified by the jailer of Jefferson County towards service of the maximum term of imprisonment.

After impsing sentence, the court informed the defendant that he has a right to appeal with the assistance of counsel; that if he is financially unable to afford an appeal a record will be prepared for him at public expense and counsel will be appointed to represent him; that an appeal must be taken within 10 days of the date of udgment, and that the clerk of the court will prepare and file a notice of appeal for him within that time is he so requests. Defendant having made a motion to proceed with appeal in forma pauperis, the court being duly advised hereby sustains said motion.

The defendant further made a motion to stay execution of death sentence pending appeal to the Kentucky Supreme Court, and the court being duly advised sustains said motion.

The defendant, Kevin Stanford is remanded to custody without bond pending appeal.

/s/ Charles M. Leibson
CHARLES M. LEIBSON,
JUDGE

September 28, 1982

SUPREME COURT OF KENTUCKY
83-SC-65-MR
83-SC-66-MR

KEVIN N. STANFORD — APPELLANT

V.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE CHARLES M. LEIBSON, JUDGE
ACTION NOS. 81-CR-1218 & 82-CR-0406

COMMONWEALTH OF KENTUCKY — APPELLEE

April 30, 1987

Kevin Stanford appeals from his sentence of death imposed by the Jefferson Circuit Court following a jury trial in which he was found guilty of murder, first-degree sodomy, first-degree robbery, and receiving stolen property over $100. The appellant, a 17-year-old juvenile at the time of his criminal deeds, raises numerous issues in his appeal: some are preserved, others are not. As this Court announced in *Ice v. Commonwealth*, Ky., 667 S.W.2d 671, 674 (1984), all prejudicial errors "must be considered, whether or not an objection was made in the trial court." Therefore, this opinion will concern itself only with the merits of the appellant's arguments and will not disregard claim of error for lack of objection unless it is apparent that the failure to object was a deliberate trial tactic.

On the evening of January 7, 1981, Barbel Poore was repeatedly raped and sodomized during and after the commission of a robbery at the Cheker gasoline station on Cane Run Road in southwestern Jefferson County where she was employed as an attendant. The proceeds of the robbery consisted of approximately 300 cartons of cigarettes, two gallons of fuel and a small amount of cash.

Following the robbery Ms. Poore was taken from the station and driven a short distance to an isolated area where she was shot twice, once in the face and once, fatally, in the head.

Based upon information obtained from a juvenile reported to be selling cigarettes and from rumors at the apartment complex near the scene of the crime where appellant resided, the police arrested Stanford on January 13, 1981. Stanford gave the police a statement, subsequently suppressed, which implicated Calvin Buchanan as the major wrongdoer in the commission of these crimes. Calvin, having no desire to return to prison from where he had recently been paroled, denied any participation in the crimes and allowed the police to tape record a conversation with his nephew, David Buchanan. During that conversation, David exonerated Calvin while admitting his involvement and that of the appellant in the crimes. David Buchanan was arrested on January 16, 1981. Following his arrest he gave the police a statement in which he confessed to rape, sodomy and robbery, and implicated Stanford as the triggerman and perpetrator of the crimes. He also implicated a third juvenile, Troy Johnson, who supplied and drove the getaway vehicle and who obtained the gun used by Stanford in the murder.

In October, 1981, following a waiver hearing, the Jefferson District Court found it was in the "interest of the community and in the interest of the child that Kevin be transferred to Circuit Court and tried under the ordinary laws governing crime."

Motions for separate trials were denied and the two were tried in August, 1982. The Commonwealth originally sought the death penalty against both defendants, but prior to trial it did not object to Buchanan's motion to exclude the application of the death penalty as to him. Buchanan received a life sentence and his conviction was upheld in his appeal to this Court.[1] Other facts will be recited as necessary for an understanding of the issues raised in this appeal.

Stanford has raised several issues in regard to the jury selection process. The procedure the trial court used was the optional method of interviewing prospective jurors individually in chambers concerning the two threshold issues of pretrial publicity and ability to consider the death penalty. The court ruled it would ask only one question concering the death penalty issue and would not allow rehabilitation by counsel of those jurors who expressed an inability to impose the death penalty. The defendants' attorneys submitted a list of nearly 30 questions which the court declined to ask. Instead, each potential juror was asked the following question by the court: "Do you have any personal conviction against imposing the death penalty, such that you could not consider it under the circumstances *in this* or in any other case and regardless of what the evidence might be"?

The appellant alleges that the emphasized words violated the rule articulated in *Witherspoon v. Illinois*, 391

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[1] *See Buchanan v. Com.*, Ky., 691 S.W.2d 210 (1985), cert. granted, ___ U.S. ___, 90 L. Ed. 2d 691 (1986) (85-5348).

U.S. 510, 88 S.Ct. 1770, 20 L. Ed. 2d 776 (1968), that prospective jurors not be asked "in advance of trial whether he would in fact vote for the extreme penalty in the case before him. . . ." *Id.*, 391 U.S. at 522, n. 21. In *Ice, supra*, p. 676, this court likewise held it to be error to question a juror whether he would consider imposing the death penalty in the "particular case before him."

We find no error in the form of the death-qualifying question posed to the jurors as the judge plainly asked each juror about his or her convictions "in this or in any other case," thus encompassing all such situations and not just the case to be tried. Further, the record shows that the judge was careful to explain to the veniremen that he was specifically not asking how they would decide the case at hand. While the death-qualifying question offered by the defendants, (number 24 in the list of 29)[2] may have been better phrased, there was nothing improper or prejudicial about the question asked by the trial court.

Stanford further complains he was denied his constitutional right to a fair trial on the basis that the jury was not selected from a representative cross section of the community. This argument is based on the following three factors: (1) that the court commenced jury selection on the last day of service for those serving in the jury

[2] 24. Are you so irrevocably opposed to the imposition of capital punishment in every possible case that you would be unwilling to consider all the penalties provided by law and would vote against the penalty of death regardless of facts and circumstances surrounding such individual cases?

pool, thereby, arguable, creating a jury of volunteers[3]; (2) that on the second day of jury selection the court's procedure of interviewing prospective jurors from the pool in alphabetical order resulted in adding only those people to the pool whose last names began with the letters A-H; and (3) that the jury was death-qualified.

We find this argument to be totally without merit. There is no indication that the statute regarding jury selection, KRS 29A.060, was other than strictly complied with. That several were excused for medical, employment or other hardship reasons was a matter within the discretion of the trial court. The court, however, did not excuse all those who expressed a desire to be excused. Those interviewed were not able to "opt in or out at will," a practice denounced in *United States v. Kennedy*, 548 F.2d 608, 612 (5th Cir. 1977), but had to demonstrate that prolonged service would create undue problems. The procedure utilized by the trial court in the *Kennedy* case was that of securing jurors from lists of those whose term of duty had already expired. The Commonwealth has referred us to *United States v. Anderson*, 500 F.2d 312 (D.C. Cir. 1974), the facts of which more closely correspond to those in the instant case, which holds as follows:

> In separating those who could from those who could not afford to expand their service, the judge did not exclude anyone or any cognizable group. The sole criterion he employed was ability to serve longer; the panel from which the jury was drawn was distinguished only be that quality. We think a trial judge's

[3] The trial court excused twenty-one (21) of the 59 veniremen questioned on the first day of trial for various personal or business reasons proffered by those jurors.

> discretion in jury selection is broad enough to encompass consideration of adverse consequences which might be suffered by jurors suddenly called to a duty prolonged materially beyond their original expectations. *Id.* p. 322.

The second prong of this argument is truly spurious. The appellant cannot seriously contend that the trial court violated his right to a jury comprised of a fair cross section of the community by interviewing veniremen on the second day in alphabetical order. He has not identified any "distinctive" characteristic possessed by those whose surnames begin with the letters I-Z. *See Ford v. Com.*, Ky., 665 S.W.2d 304, 308 (1983), citing *Duren v. Missouri*, 439 U.S. 357, 99 S. Ct. 664, 668, 58 L. Ed. 2d 579 (1979). Moreover, had the appellant proven or articulated such characteristics, there was no error as more than half of the jurors who actually heard the case had surnames beginning with these letters. It is thus evident that the group was not excluded from the jury. Finally, as pointed out in *Pope v. United States*, 372 F.2d 710, 725 (8th Cir. 1967), vacated on other grounds, 392 U.S. 651 (1968), "[t]he point at which an accused is entitled to a fair cross-section of the community is when the names are put in the box from which the panels are drawn. . . ." Thus, the court's use of a facially neutral procedure in questioning a panel of potential jurors does no harm to a defendant's due process rights.

Concerning the exclusion of those opposed to the imposition of the death penalty, such argument was rejected by this Court in Buchanan's appeal. (*See* footnote

1.) Further, the case of *Grigsby v. Mabry*, 758 F.2d 226 (8th Cir. 1985) (en banc) relied upon by Stanford, was overruled by the Supreme Court in *Lockhart v. McCree*, ___ U.S. ___, 106 S.Ct. 1758, 90 L.Ed.2d 137 (1986), which held as follows:

> "Witherspoon – excludables," or for that matter any other group defined solely in terms of shared attitudes that render members of the group unable to serve as jurors in a particular case, may be excluded from jury service without contravening any of the basic objectives of the fair cross-section requirement. . . . It is for this reason that we conclude that "Witherspoon – excludables" do not constitute a "distinctive group" for cross-section purposes, and hold that "death qualification" does not violate the fair cross-section requirement."

Stanford further alleges the trial court denied him his right to a trial by an impartial jury by unduly restricting the voir dire examination. We have reviewed the record in light of this claim and find no support for this allegation. That the trial court refused to allow counsel to rehabilitate potential jurors struck for cause due to their stated inability to consider the death penalty, and further, that it refused to ask each juror during the limited in camera voir dire the exhausting list of questions posed by Stanford and his codefendant, did not in any manner, directly or by implication, hamper or impede the appellant's attorney in his questioning during the general voir dire or limit the scope of such examination at that time.

Simply put, the rulings and discussions of record concerning the list of questions proposed by the defendants never addressed the propriety of asking the questions during the general voir dire.[4] We can find no rulings on the merits of the questions nor any hint of how the court would have ruled had appellant's counsel attempted to ask the questions of the jurors during the collective voir dire. As the trial court did not make any rulings adverse to the appellant during his counsel's questioning of the jury, we can find no error prejudicial to appellant. We do not disagree with appellant that he had a right to life-qualify the jury. In this regard we agree with the Court's holding in *Patterson v. Commonwealth*, 283 S.E.2d 212 (Va.1981). Why, however, counsel chose not to explore "the veniremen's predilection for imposing the death penalty," *id.* at 215, is a question which cannot be attributed to any action or failing of the trial court.

Further, in this regard we find no error in the court's decision to strike for cause the seven jurors who indicated they would not under any circumstances impose the death penalty. These jurors were not excused merely because they "voiced general objections to the death penalty . . . , *Witherspoon, supra*, 391 U.S. at 522, or "would

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[4] It is easy to understand why the court declined to ask the questions during the individual voir dire. Not only was the list lengthy but several of the questions were so broad in nature that it could easily have taken several weeks to complete the individual voir dire. For example, question 5 asked, "How do you feel about the death penalty being a deterrent of crime"? Question 7(b) read, "What is your definition of reasonable doubt"? We note that these specific questions were not relevant to the issue at hand, that is, that of a juror's ability to be impartial, although others were more to the point.

rather not" impose the ultimate penalty. *People v. Szabo*, 94 Ill. 2d 327, 447 N.E.2d 193 (1983). Instead, the seven expressed in clear words that their attitudes were such that they could not impose the death penalty regardless of the circumstances presented. There was no equivocation as appellant would lead us to believe. The court's decision to strike the seven for cause was thus appropriate under the standard articulated in *Adams v. Texas*, 448 U.S. 38, 45, 100 S.Ct. 2521, 2326, 65 L. Ed. 2d 581, 589 (1980). In that case the Court concluded that only one whose views "would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath" could be excluded from the jury. As explained in *Wainwright v. Witt*, ___ U.S. ___, 105 S.Ct. 844, ___ L. Ed. 2d ___ (1985), "[t]he quest is for jurors who will conscientiously apply the law and find the facts. That is what an 'impartial' jury consists of. . . ."

The appellant is correct that one may not be struck for cause merely because he would hesitate to vote for the death penalty, or has religious or philosophical qualms about imposing the penalty. Such "qualms" are to be expected. *People v. Szabo*, at 207. The appellant is not, however, aided by the cases cited for this proposition as, stated hereinbefore, the court did not strike any who were ambivalent. Further, the court correctly and properly inquired of those who initially expressed doubts whether or not it would be "impossible" for them to decide on the death penalty "regardless of the evidence." Only those who affirmatively stated it would be so impossible were excused for cause. The appellant criticizes the trial court for making such inquiry, arguing that in so doing the court gave the jurors "an opportunity to

escape making a difficult decision," and in effect told jurors "how to avoid serving on the case." We believe, however, that had the court failed to ascertain the extent of the jurors' views on the subject it would not have obtained the crucial information required by *Adams*, that is, whether their views were such as would impair their performance or duties as a juror.

That potential jurors may take probing questioning as an opportunity to sidestep their civic duty is a problem inherent in the jury selection process. That such actually occurred is a matter not likely to be evident from the record. Thus, it is incumbent upon us to trust in the impressions of the trial court.

As remarked in *Wainwright:*

> Despite this lack of clarity in the printed record, however, there will be situations where the trial judge is left with the definite impression that a prospective juror would be unable to faithfully and impartially apply the law. . . . [T]his is why deference must be paid to the trial judge who sees and hears the juror.

Id., pp. 852-853.

Concerning juror Harkess, whom the court refused to strike for cause, the court was satisfied, as are we, that she could decide the case solely on the evidence presented in court and not from media accounts. The judge found she could be "open minded" and we find nothing in her responses to the court to determine otherwise. Lastly in this category, any prejudice caused by the prosecutor's remarks concerning reasonable doubt during voir dire was cured by the court's admonition.

The most serious issue in the appeal, we believe, is the appellant's allegation that he was denied a fair trial because of the court's refusal to grant his motion for a separate trial and/or by the court's failure to exclude during the trial the confession of his nontestifying codefendant, Buchanan.[5] This confession implicated Stanford as the triggerman in the murder and as a participant in the other crimes. The court ruled that it could "protect" Stanford by sanitizing the confession, that is, by not allowing Stanford's name to be mentioned by the witness, Detective Hall, to whom Buchanan confessed. Instead, he was consistently referred to as "some other person." As Hall related that Buchanan's expressed reason for confessing was to clear his uncle Calvin, and as Troy Johnson was referred to by name, the "other person," considering all the other evidence at trial, Stanford argues, could only have referred to him. Nevertheless, we believe the editing of his name from the confession was sufficient to protect his right to cross-examine inculpating witnesses, a right provided by the Confrontation Clause of the Sixth Amendment. *Bruton v. United States*, 391 U.S. 123, 88 S.Ct. 1620, 20 L. Ed. 2d 476 (1968).

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[5] Stanford additionally alleges he was entitled to a separate trial because the trial court's ruling which granted Buchanan's motion to exclude the death penalty as to him, a motion not objected to by the Commonwealth, amounted to a judicial usurpation of the jury's fact-finding role. That the Commonwealth decides to seek the death penalty against a defendant in a joint trial with a codefendant who is not death eligible does not "strip" the jury of its function in determining which defendant, if either, is ultimately responsible for the commission of the crime as charged. To accept Stanford's argument in this regard would preclude the state from ever trying defendants jointly when one is charged with a higher degree of culpability than the other.

Even if the admission of Buchanan's statement did constitute an error, it is subject to "harmless-error analysis," *Delaware v. Van Arsdall*, 475 U.S. ___, 106 S.Ct. ___, 89 L. Ed. 2d 674, 686 (1986), *see also Harrington v. California*, 395 U.S. 250, 89 S.Ct. 1726, 23 L. Ed. 2d 284 (1969), and *Lee v. Illinois*, 476 U.S. ___, 106 S.Ct. ___, 90 L. Ed. 2d 514 (1986), and our inquiry thus becomes whether the "error was harmless beyond a reasonable doubt." *Delaware*, p. 686; *Lowe v. Commonwealth*, Ky., 487 S.W.2d 935 (1972).

Certainly Buchanan's confession was cumulative and, although not insignificant, it did not have the devastating quality as other direct evidence of Stanford's guilt, particularly that of his own extra-judicial admissions,[6] the testimony of Troy Johnson and the physical evidence including his pubic hairs on various parts of the victim's body, and his fingerprints on the car. Considering all this other evidence before the jury, we believe the error in this case to be harmless. As the Supreme Court remarked in *Schneble v. Florida*, 405 U.S. 427, 432, 92 S.Ct. 1056, 31 L.Ed.2d 340, 345 (1972), "Judicious application of the harmless-error rule does not require that we indulge assumptions of irrational jury behavior when a perfectly

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[6] Stanford told Richard Reetzhe that he would blow his brains out "just like the girl." He bragged to other juveniles while in the detention center that, "I made her suck my dick," and "we fucked her in the bootie." He explained to Michael Nally that, "I had to shoot her, the bitch lived next to me and she would recognize me."

rational explanation for the jury's verdict, completely consistent with the judge's instruction, stares us in the face."

The next group of alleged errors concerns various rulings of the trial court on evidentiary matters. First the appellant asserts that the admission of his remarks to Michael Nalley, a corrections officer at the detention center, constituted a violation of his Fifth and Sixth Amendment rights not to incriminate himself and to be represented by counsel. Nalley, who heard Stanford bragging to others in the center about his misdeeds,[7] was asked by the appellant, in a conversation initiated by appellant, how much time he (Nalley) believed Stanford would have to serve for the crimes. After discussing how long and where he would serve, Nalley asked Stanford why he resorted to killing the victim of his sexual attacks. Nalley's testimony of Stanfords's response is as follows:

> [H]e said, I had to shoot her, the bitch lived next to me and she would recognize me. And then, in a laughing manner, Mr. Stanford went on and he continued, he said, I guess, we could have tied her up or something or beat the piss out of her . . . and tell her if she tells, we would kill her. . . . Then after he said that he started laughing and I just shook my head, and just continued to watch TV and didn't say anything else.

This conversation occurred several days after Stanford was placed in the detention center and advised of his rights. He insisted Nalley should have re-advised him of these rights, particularly his right not to be interrogated

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[7] See footnote 6, *supra*.

without counsel and that his failure to so warn required the suppression of Nalley's testimony. We do not agree.

In *Edwards v. Arizona*, 451 U.S. 477, 485, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981), relied upon by the trial court, the Supreme Court held that one who had asserted his right to be represented by counsel could not be interrogated further "unless the accused himself *initiates* further communication, exchanges or conversations with the police." There is no question, by asking the officer's opinion about the sentence he would receive, that Stanford "initiated" further conversation. *See Oregon v. Bradshaw*, 462 U.S. 1039, 1045, 103 S.Ct. 2830, 77 L.Ed.2d 405 (1983). Considering the totality of the circumstances including the fact that he initiated the conversation, the question is whether the appellant validly waived his right to silence and to have counsel present. *Id.*, 462 U.S. at 1046. This question was answered adversely to the appellant by the trial court following the suppression hearing and the record supports its finding that the statement was voluntarily made. Stanford knew exactly who Nalley was. There was no evidence that he had any reason to believe his remarks to Nalley would be treated confidentially. Nalley certainly did nothing to keep Stanford from exercising his constitutional rights.

There is simply no merit to any of the other issues concerning the admission of evidence and we will not belabor this opinion by discussing each one individually. The findings of the trial court contained in its opinion and order in regard to the appellant's motion to suppress are supported by the record and its legal determinations are sound.

Stanford alleges that the trial court committed substantial error in violation of the Eighth and Fourteenth Amendments and Sections 11 and 17 of our Kentucky Constitution by excluding mitigating evidence offered by the defense during the penalty phase of the trial. This assignment of error warrants more than passing comments by us.

During the penalty phrase of the trial, Robert Jones, a former death row survivor, was called as a defense witness. Jones, at the time, was a supervisor for the (Louisville) Mayor's Summer Youth Program. He had experience with various programs dealing with youths on a counseling basis although he holds no academic or professional credentials. He was also vice-chairman of the Kentucky Coalition Against the Death Penalty. In that capacity he testified that he traveled about speaking to groups and conducting seminars against the death penalty. He claimed to be demonstrative evidence that one can be rehabilitated.

The trial court excluded his testimony before the jury. Jones' opinion, preserved by an avowal of why Kevin Stanford should not be executed is, partially, as follows:

> Q And, sir, could you tell me your unique relationship with the death penalty?
>
> A Well, at one time, I was on death row myself.

Jones related that in 1978 and 1979 he became familiar with Kevin Stanford while a youth counselor at a children's detention center. He talked with him again within a week before the trial began. Jones' avowal testimony continues:

A Yes, sir. I feel that Kevin need to be in an adult institution where the rehabilitation program and the proper training is a lots greater than it is in the juvenile facilities. I think that Kevin need discipline. I think that that Kevin's biggest problem is the lack of discipline in his life as a youth.

. . . .

A Sir, I truly feel that the death penalty is not appropriate for anyone I guess because my own personal experience that I've had. I am against capital punishment 1000% and I realize that even if Kevin was guilty of the crime, it's not going to bring the victim back. I feel that with his young age, that this man can be rehabilitated. And, if a 17 or 18 year old cannot be rehabilitated, then this is a failure in our correction department instead of the individual.

. . . .

I feel that this young man should be given this opportunity to place him in the Department of Corrections with the proper type of counseling. Now, I've heard that Kevin had a drug problem. There's no difference between a drug problem and an alcoholic problem.

. . . .

Q Do you think being in the penal population and being with the population in a penal system will affect Kevin?

A Mentally, yes, sir.

Q How will it affect him?

A I feel that Eddyville will make him or break him. And, I feel with the type of program that they have at Eddyville that he'd never been exposed to in a juvenile facility, that this is another thing, he would have an opportunity to get a GED; he'd have an opportunity to get him a college education; he'd have an

opportunity to get into so many type of vocational training and I think that this is what Kevin needs.

. . . .

Q Do you think a life sentence would wake him up to that fact?

A The life sentence is going to wake him up and the maximum security environment will wake him up.

Stanford argues that the exclusion of Jones' mitigating testimony was error of constitutional magnitude. We disagree and sustain the trial court ruling. *Lockett v. Ohio*, 438 U.S. 586, 98 S. Ct. 2954, 57 L. Ed. 2d 973 (1978), sets the constitutional perimeters for dealing with the reception into evidence before a trier of fact of mitigating circumstances. The Supreme Court comments:

> [W]e conclude that the Eighth and Fourteenth Amendments require that the sentencer [herein the jury], in all but the rarest kind of capital case [footnote omitted], not be precluded from considering *as a mitigating factor*, any aspect of a defendant's *character* or *record* and any of the *circumstances of the offense* that the defendant proffers as a basis for a sentence less than death. [Here referring to footnote 12: "Nothing in this opinion limits the traditional authority of a court to exclude, as irrelevant, evidence not bearing on the defendant's character, prior record, or the circumstances of his offense"]. [Last three emphases ours.]

KRS 532.025, our death-qualifying statute, provides in part that after a conviction of a crime for which the death penalty may be imposed by jury, the trial shall resume and the prosecuting attorney shall open and the defendant shall conclude the evidence and arguments. The statute says that the judge or the jury shall consider "any mitigating circumstances or aggravating circumstances

otherwise authorized by law" and any of the eight statutory circumstances of mitigation.

The thrust of the claim of error was that the trial court erred in not allowing the jury to hear the testimony of Robert Jones because *Lockett, supra,* through the Eighth and Fourteenth Amendments, requires that the sentencing body consider any relevant evidence offered by the defense in mitigation of capital punishment. Further, KRS 532.025 authorizes the sentencing body to consider "any mitigating circumstances otherwise authorized by law."

Lockett expresses the minimum factors of what is admissible in complying with the Eighth and Fourteenth Amendments. The factors are the defendant's character, prior record and circumstances of the offense. KRS 532.025 is more expansive in that it spells out eight circumstances of mitigation that are relevant, and it contains a catch-all provision, "any mitigating circumstances otherwise authorized by law." This provision would permit the trial court to submit any redeeming evidence to the jury. However, we believe the evidence must contain facts or a qualified opinion bearing on the defendant's character, prior record or circumstances of the offense, or relative to one of the specified statutory mitigating circumstances.

Utilizing this standard, a review of Robert Jones' proffered testimony shows that it was clearly inadmissible. He had no testimony shows that it was clearly inadmissible. He had no academic or professional qualifications to all him to offer opinion evidence. His personl knowledge of Stanford was at best minimal and remote.

What very little of his testimony which might conceivably be admissible, such as the rehabilitative prospects of the defendant, was cumulative. The main theme of his testimony concerned his own philosophy about the value of the death sentence. We say clearly that was not admissible. The penalty phase of the trial is not an open forum for the expression of one's personal philosophical beliefs concerning the propriety of the death penalty. If permitted, the Commonwealth could offer rebuttal testimony about the moral righteousness of the death penalty, the result being that the jury would be bombarded with philosophical and moral opinions, none of which are relevant to the decision it must reach. *See Ice v. Com.*, Ky., 667 S.W.2d 671, 676 (1984). The trial court acted properly by excluding Robert Jones' testimony.

Stanford alleges that prejudicial error resulted when the prosecutor inquired during cross-examination of the appellant's stepfather whether he was aware that the victim was the mother of a small child. George Boller, appellant's stepfather, made a statement as a defense witness on cross-examination that the appellant was going to straighten his life out because he had a child. The prosecutor retaliated by asking Boller if he was aware that the victim had an eleven-month-old child. The matter was objected to and a motion for mistrial was lodged. The prosecutor claimed he was entitled to bring the matter out because Boller had opened the door by making a statement about the appellant's child. The trial court overruled the objection and motion for mistrial but gave the jury an admonition to disregard the nature of the information.

The statements have no relevancy or probative value and would, without question, have been suppressed if the trial court had beed forewarned. Regardless, because the statements were injected before the jury, was the appellant denied a fair trial? We say no. The trial court kept the jury's mind in proper perspective with the admonition. It cured any inflammatory nature of the statement and we see no substance or reversible error pertaining to it. We simply comment that a trial of this magnitude will invariably be marred with occasional minor or surface knicks which, when cured by the trial court, cause no substantial error.

Stanford alleges the prosecutor's closing argument in the penalty phase deprived the appellant of his right to a fair trial consonant with due process of law, as guaranteed by the Kentucky and United States Constitutions, and introduced arbitrary considerations into the jury's decision-making process.

We can see where there was no objections by trial counsel on behalf of the appellant to the prosecutor's remarks because his remarks were so unclear as to be barely intelligible even under our close scrutiny. Such remarks, in our opinion, could hardly mislead anyone hearing them. Therefore, we are not persuaded by appellant's argument and do not read into the prosecutor's remarks that which the appellant reads into them. The prosecutor told the jury that appellant showed no remorse for his crime. The appellant argues that had he shown remorse by outburst before the jury, then the prosecutor would have contended that it was contrived. This assignment of error is so baseless it warrants no further discussion. As in *Marlowe v. Com.*, 709 S.W.2d

424, 431 (1986), we believe the jury would have returned the same sentence regardless of the comments complained of.

The appellant has devoted a substantial portion of his brief to his assertion that KRS 208.170 was applied in an unconstitutional manner in the process leading to the juvenile court's waiver of jurisdiciton over him.[8] He makes two arguments in support of this claim: (1) that the statute is applied in a racially discriminatory manner and (2) that he was found by the district court to be amenable to treatment.

Stanford has compiled a barrage of statistics in an attempt to persuade us that black youths were treated disproportionately under this statute in the juvenile division of the Jefferson District Court. The most disturbing statistic presented by Stanford is that of 56 grand jury referrals in the years 1975 through 1979, 68% were black juveniles, a group, according to the appellant's statistics, that comprised only 30% of the total number of referrals to juvenile court. He thus concludes that, although white juveniles committed twice as many offenses as blacks, they were referred to the grand jury at a rate of only half that of their black counterparts. We do not believe, however, that these statistics warrant the conclusion that race is in any way a factor in the waiver process.

It is quite possible that the percentages of grand jury referrals can be rationally explained by Stanford's figures which show black youths committed more than half of all the homicides and robberies and nearly half the assaults

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[8] Stanford concedes that the statute is facially valid.

and rapes. More to the point, though, we find these statistics to be inadequate in the drawing any conclusions bearing on this issue. For example, a factor not included in the appellant's analysis and one we believe crucial in order to find appellant to have set forth a *prima facie* case of racial discrimination in this context is the percentage, if any, of the 56 grand jury referrals that comprise repeat offenders, those, like Stanford, for whom the state's previous attempts to rehabilitate proved unsuccessful. We are not at all persuaded by Stanford's statistics and find no evidence whatsoever to convince us that Stanford or any other juvenile was directly or indirectly the victim of racial discrimination in waiver proceedings before the Jefferson District Court.

The second aspect of this allegation of error concerns the district court's finding of Stanford's amenability to treatment. Specifically the district court found that Stanford was "emotionally immature and *could be* amenable to treatment if properly done on a *long term basis* of psychotherapeutic intervention and reality based therapy for socialization and drug therapy in a residential facility." (Emphases added.) The court further found that such a facility did not exist in this state and concluded that it did not have authority to require the state to provide institutionalization outside the state or, importantly, the authority to keep Stanford institutionalized "for the length of time sufficient to provide such intervention reasonably calculated to provide rehabilitation . . . ."

The thrust of Stanford's argument is that "the state has an obligation not to execute a juvenile who is deemed to be amenable to treatment but for whom the state offers no appropriate treatment program," and that imposing

the death penalty violates the state and federal constitutional prohibitions against cruel and unusual punishment.

We are not unmoved by Stanford's arguments in this regard. Nevertheless, it is apparent from the record that Stanford has been given the benefit of treatment available to youthful offenders in the Commonwealth on a repeated basis over a period of several years before his involvement in the crimes charged in the instant case. Since the age of ten, Stanford has revolved in and out of juvenile court having committed various offenses including arson, burglary, sexual abuse, theft and assault, to name but a few. We do not know whether the county and state personnel who worked with Stanford in the various facilities in which he was placed are responsible for his failure to be rehabilitated or whether the fault lies within the appellant himself. What is clear, however, from the record and is contained in the district court's waiver order is that there was no program or treatment appropriate for the appellant in the juvenile justice system. Thus, even though he was exposed to the death penalty, the district court did not err in determining that it was in his best interest to be tried as an adult and thereby waiving jurisdiction over the appellant. *Sharp v. Commonwealth*, Ky., 559 S.W.2d 727 (1977). It was certainly not in his best interest, not to mention that of the community, to be committed to a treatment facility from which, after a brief period of time, he would again be free to murder or otherwise harm as he pleased.

Stanford demands that he has a constitutional right to treatment. We hold that he has already had all the treatment the Commonwealth can provide. No less than

three times in his brief he has reminded us of the previous observation of this Court, that "incorrigibility is inconsistent with youth." *Workman v. Com.*, Ky., 429 S.W.2d 374, 378 (1968). However, as we more recently recognized in *Ice v. Commonwealth, supra*, at p. 680, the reality, at times, is to the contrary.

In sum, the waiver statute was appropriately followed and not unconstitutionally applied to the appellant. His age and the possibility that he might be rehabilitated were mitigating factors appropriately left to the consideration of the jury that tried him. We do not believe the penalty to be inconsistent with any constitutional protections or requirements.

We have addressed the merits of all the issues we believe to be of any legal significance. Stanford has raised others which simply do not warrant detailed discussion. For example, he argues there was insufficient evidence to support his conviction for sodomy. Considering the position of the victim's body, that she was partially nude, that she incurred severe bruising to her anus and that the appellant's pubic hairs were found on her bare thigh as well as on other parts of her body or clothing, not mention his statement to others repeated elsewhere in this opinion that he required her to perform both oral and anal sodomy, there can be no serious contention that there was not sufficiency of evidence to submit this charge to the jury under the standard set forth in *Commonwealth v. Sawhill*, 660 S.W.2d 3 (1983). Likewise, appellant's claim that the police lacked probable cause to arrest him is frivolous. The police arrested Stanford after being informed by another juvenile who was caught selling stolen cigarettes that the cigarettes

had been obtained from Stanford who admitted stealing them from the Checker station.

The remaining assignments of error are unpersuasive, not because of their argument but because of their lack of legal substance. Because of that we will not comment upon them.

Finally, as in all capital cases, we have reviewed the sentence as required by KRS 532.075. As we stated in *Matthews v. Com., supra* at p. 709, it is difficult to compare one murder case with another. However, we have no difficulty in stating that the sentence in the instant case is neither excessive nor disproportionate to the penalty imposed in similar cases.[9]

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[9] We have compiled data since 1970 in those cases where a death penalty has come before this Court for review, considering both aggravating and mitigating circumstances in those cases and comparing them with the present case. The cases we have considered are:

1) *Halvorsen & Willoughby v. Commonwealth*, ___S.W.2d ___ (decided December 18, 1986).
2) *McClellan v. Commonwealth*, Ky., 715 S.W.2d 464 (1986).
3) *Bevins v. Commonwealth*, Ky., 712 S.W.2d 932 (1986).
4) *Marlowe v. Commonwealth*, Ky., 709 S.W.2d 424 (1986).
5) *Matthews v. Commonwealth*, Ky., 709 S.W.2d 421 (1986).
6) *Holland & James v. Commonwealth*, Ky., 703 S.W.2d 876 (1986).
7) *Kordenbrock v. Commonwealth*, Ky., 700 S.W.2d 384 (1985).
8) *Ward v. Commonwealth*, Ky., 695 S.W.2d 404 (1985).
9) *Skaggs v. Commonwealth*, Ky., 694 S.W.2d 672 (1985).
10) *Harper v. Commonwealth*, Ky., 694 S.W.2d 665 (1985).
11) *White v. Commonwealth*, Ky., 671 S.W.2d 241 (1984).

(Continued on following page)

The judgment of the Jefferson Circuit Court is affirmed.

Stephens, C.J., Gant, Lambert, Stephenson, Vance and Wintersheimer, JJ., sitting. All concur.

(Continued from previous page)

12) *McQueen v. Commonwealth*, Ky., 669 S.W.2d 519 (1984).
13) *Ice v. Commonwealth*, Ky., 667 S.W.2d 671 (1984).
14) *Gall v. Commonwealth*, Ky., 607 S.W.2d 97 (1980).
15) *Smith v. Commonwealth*, Ky., 599 S.W.2d 900 (1980).
16) *Hudson v. Commonwealth*, Ky., 597 S.W.2d 610 (1980).
17) *Boyd v. Commonwealth*, Ky., 550 S.W.2d 507 (1977).
18) *Meadows v. Commonwealth*, Ky., 550 S.W.2d 511 (1977).
19) *Self v. Commonwealth*, Ky., 550 S.W.2d 509 (1977).
20) *Lenston v. Commonwealth*, Ky., 497 S.W.2d 561 (1973).
21) *Scott v. Commonwealth*, Ky., 495 S.W.2d 800 (1973).
22) *Tinsley v. Commonwealth*, Ky., 495 S.W.2d 776 (1973).
23) *Galbreath v. Commonwealth*, Ky., 492 S.W.2d 882 (1973).
24) *Caine v. Commonwealth*, Ky., 491 S.W.2d 824 (1973).
25) *Caldwell v. Commonwealth*, Ky., 503 S.W.2d 485 (1972).
26) *Leigh v. Commonwealth*, Ky., 481 S.W.2d 75 (1972).
27) *Call v. Commonwealth*, Ky., 482 S.W.2d 770 (1972).

SUPREME COURT OF KENTUCKY

83-SC-65-MR
83-SC-66-MR

(title omitted in printing)

ORDER DENYING PETITION FOR REHEARING ORDER GRANTING PETITIONS FOR MODIFICATION

Appellant's petition for rehearing is denied.

The petitions of appellant and appellee for modification of the opinion are granted. The opinion is hereby modified by deleting pages 1, 2 and 8 of the original opinion and substituting new pages 1, 2 and 8 in lieu thereof.

All concur except Leibson, J., who did not sit.

ENTERED September 3, 1987.

/s/ Robert F. Stephens
Chief Justice

Juvenile Referrals by Planning Service Community, Race and Year

P.S.C.	FIVE YEAR TOTAL					
	WHITE		BLACK		TOTAL	
	No.	%	No.	%	No.	%
(1)	322	16.5	1,625	83.5	1,947	100.0
2	1,904	66.5	958	33.5	2,862	100.0
(3)	85	9.5	811	90.5	896	100.0
(4)	1,019	45.9	1,200	54.1	2,219	100.0
(5)	137	6.1	2,127	93.9	2,264	100.0
(6)	380	15.7	2,041	84.3	2,421	100.0
(7)	230	27.3	612	72.7	842	100.0
8	1,004	83.1	204	16.9	1,208	100.0
9	2,154	89.7	247	10.3	2,401	100.0
10	3,032	91.1	296	8.9	3,328	100.0
11	3,927	96.9	126	3.1	4,053	100.0
12	3,300	94.1	206	5.9	3,506	100.0
13	4,078	79.6	1,042	20.4	5,120	100.0
14	2,008	94.6	115	5.4	2,123	100.0
15	1,514	93.8	100	6.2	1,614	100.0
Out of County	1,972	90.6	204	9.4	2,176	100.0
TOTAL	27,066	69.4	11,914	30.6	38,980	100.0

Institutionalization Referrals by Planning Service Community, Race and Year

P.S.C.	FIVE YEAR TOTAL					
	WHITE		BLACK		TOTAL	
	No.	%	No.	%	No.	%
1	21	16.4	107	83.6	128	100.0
2	149	68.7	68	31.3	217	100.0
3	4	10.5	34	89.5	38	100.0
4	71	43.8	91	56.2	162	100.0
5	6	4.1	140	95.9	146	100.0
6	17	14.2	103	85.8	120	100.0
7	19	31.7	41	68.3	60	100.0
8	73	83.9	14	16.1	87	100.0
9	76	89.4	9	10.6	85	100.0
10	181	91.0	18	9.0	199	100.0
11	139	93.9	9	6.1	148	100.0
12	131	92.9	10	7.1	141	100.0
13	157	77.7	45	22.3	202	100.0
14	64	86.5	10	13.5	74	100.0
15	76	98.7	1	1.3	77	100.0
Out of County	41	83.7	8	16.3	49	100.0
TOTAL	1,225	63.4	708	36.6	1,933	100.0

Manner of Handling by Race and Year.

YEAR	WHITE						BLACK					
	FORMALS		INFORMALS		TOTAL		FORMALS		INFORMALS		TOTAL	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
1979	3,254	59.5	2,219	40.5	5,473	100.0	1,667	73.5	602	26.5	2,269	100.0
1978	3,100	61.2	1,964	38.8	5,064	100.0	1,724	71.8	678	28.2	2,402	100.0
1977	3,186	62.2	1,935	37.8	5,121	100.0	1,726	74.0	605	26.0	2,331	100.0
1976	3,422	62.4	2,061	37.6	5,483	100.0	1,933	74.7	653	25.3	2,586	100.0
1975	3,508	59.2	2,417	40.8	5,925	100.0	1,636	70.3	690	29.7	2 326	100.0
TOTAL	16,470	60.9	10,596	39.1	27,066	100.0	8,686	72.9	3,228	27.1	11 914	100.0

YEAR	TOTAL					
	FORMALS		INFORMALS		TOTAL	
	No.	%	No.	%	No.	%
1979	4,921	63.6	2,821	36.4	7,742	100.0
1978	4,824	64.6	2,642	35.4	7,466	100.0
1977	4,912	65.9	2,540	34.1	7,452	100.0
1976	5,355	66.4	2,714	33.6	8,069	100.0
1975	5,144	62.3	3,107	37.7	8,251	100.0
TOTAL	25,156	64.5	13,824	35.5	38,980	100.0

YEAR	Major Property No.	Major Property %	Social Control No.	Social Control %	Persons (Phy. Harm) No.	Persons (Phy. Harm) %	Persons (No Harm) No.	Persons (No Harm) %	TOTAL No.	TOTAL %
1979	0	-	0	-	6	100.0	0	-	6	100.0
1978	4	26.7	1	6.7	9	60.0	1	6.7	15	100.1
1977	2	22.2	0	-	6	66.7	1	11.1	9	100.0
1976	5	45.5	0	-	6	54.5	0	-	11	100.0
1975	10	66.7	1	6.7	3	20.0	1	6.7	15	100.1
TOTAL	21	37.5	2	3.6	30	53.6	3	5.4	56	100.1

First Offenders by Race and Year.

YEAR	WHITE MALE	WHITE FEMALE	WHITE Sub T No.	WHITE Sub T %	BLACK MALE	BLACK FEMALE	BLACK Sub T No.	BLACK Sub T %	TOTAL No.	TOTAL %
1979	1,920	952	2,872	76.3	547	343	890	23.7	3,762	100.0
1978	1,764	915	2,679	72.5	643	373	1,016	27.5	3,695	100.0
1977	1,809	879	2,688	73.9	593	358	951	26.1	3,639	100.0
1976	1,972	967	2,939	74.7	625	372	997	25.3	3,936	100.0
1975	1,988	921	2,909	77.8	536	292	828	22.2	3,737	100.0
TOTAL	9,453	4,634	14,087	75.1	2,944	1,738	4,682	24.9	18,769	100.0

Informal Adjustment Disposition by Race and Year.

YEAR	WHITE MALE	WHITE FEMALE	WHITE Sub T No.	WHITE Sub T %	BLACK MALE	BLACK FEMALE	BLACK Sub T No.	BLACK Sub T %	TOTAL No.	TOTAL %
1979	468	162	630	67.8	218	81	299	32.2	929	100.0
1978	467	189	656	62.4	301	95	396	37.6	1,052	100.0
1977	499	190	689	65.0	266	105	371	35.0	1,060	100.0
1976	481	140	621	67.0	234	72	306	33.0	927	100.0
1975	280	96	376	67.0	134	51	185	33.0	561	100.0
TOTAL	2,195	777	2,972	65.6	1,153	404	1,557	34.4	4,529	100.0

Grand Jury Referrals by Planning Service Community, Race and Year

P.S.C.	FIVE YEAR TOTAL					
	WHITE		BLACK		TOTAL	
	No.	%	No.	%	No.	%
1	0	-	8	100.0	8	100.0
2	2	40.0	3	60.0	5	100.0
3	0	-	3	100.0	3	100.0
4	1	16.7	5	83.3	6	100.0
5	0	-	4	100.0	4	100.0
6	2	22.2	7	77.8	9	100.0
7	0	-	2	100.0	2	100.0
8	1	100.0	0	-	1	100.0
9	3	100.0	0	-	3	100.0
10	3	75.0	1	25.0	4	10.0
11	2	100.0	0	-	2	100.0
12	2	66.7	1	33.3	3	100.0
13	0	-	3	100.0	3	100.0
14	0	-	0	-	0	-
15	1	100.0	0	-	1	100.0
Out of County	1	50.0	1	50.0	2	100.0
TOTAL	18	32.1	38	67.9	56	100.0

Homicide Referrals by Sex, Race and Year.

YEAR	WHITE		Sub T		BLACK		Sub T		TOTAL	
	Male	Female	No.	%	Male	Female	No.	%	No.	%
1979	4	0	4	44.4	5	0	5	56.6	9	100.0
1978	5	0	5	50.0	3	2	5	50.0	10	100.0
1977	3	0	3	23.1	9	1	10	76.9	13	100.0
1976	7	2	9	56.3	7	0	7	43.8	16	100.0
1975	2	0	2	33.3	4	0	4	66.7	6	100.0
TOTAL	(21)	(2)	23	42.6	(28)	3	31	57.4	54	100.0

Homicide Referrals by Disposition and Year.

YEAR	F.A.W.L		Grand Jury		Delinquent Institution		Probation		Community Resources		Other		TOTAL	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
1979	4	44.4	2	22.2	2	22.2	1	11.1	0	-	0	-	9	99.9
1978	4	40.0	1	10.0	1	10.0	3	30.0	1	10.0	0	-	10	100.0
1977	5	38.5	2	15.4	3	23.1	2	15.4	1	7.7	0	-	13	100.1
1976	4	25.0	2	12.5	5	31.3	2	12.5	0	-	3	18.8	16	100.1
1975	1	16.7	1	16.7	3	50.0	0	-	1	16.7	0	-	6	100.1
TOTAL	18	33.3	8	14.8	14	25.9	8	14.8	3	5.6	3	5.6	54	100.0

1975

Table 2. Juvenile Referrals by Reason Referred, Sex and Race

REASON REFERRED	MALE White No.	%	MALE Black No.	%	MALE Sub T. No.	%	FEMALE White No.	%	FEMALE Black No.	%	FEMALE Sub T. No.	%	TOTAL No.	%
Paternity	0	-	2	0.1	2	*	0	-	0	-	0		2	-*
Marriage Request	5	0.1	0	-	5	0.1	12	0.8	0	-	12	0.6	17	0.2
Arson	47	1.1	9	0.5	56	0.9	0	-	3	0.5	3	0.1	59	0.7
Assault Aggravated	54	1.2	44	2.5	98	1.6	11	0.7	17	3.0	28	1.4	126	1.5
Assault	128	2.9	86	4.9	214	3.5	13	0.9	28	4.9	41	2.0	255	3.1
Attempted Suicide	4	0.1	0	-	4	0.1	1	0.1	0	-	1	0.1	5	0.1
Auto Tampering	20	0.5	6	0.3	26	0.4	1	0.1	0	-	1	0.1	27	0.3
Auto Theft	15	0.3	3	0.2	18	0.3	0	-	0	-	0	-	18	0.2
Unauthorized Use of Auto	77	1.7	7	0.4	84	1.4	2	0.1	1	0.2	3	0.1	87	1.1
Banding to Commit Felony	3	0.1	1	0.1	4	0.1	5	0.3	0	-	5	0.2	9	0.1
Disorderly Conduct	392	8.8	104	5.9	496	8.0	100	6.7	32	5.6	132	6.4	628	7.6
Destruction of Property	114	2.6	43	2.5	157	2.5	1	0.1	10	1.7	11	0.5	168	2.0
Dependency	282	6.4	116	6.6	398	6.4	298	19.9	108	18.8	406	19.6	804	9.7
Drunkenness	180	4.1	5	0.3	185	3.0	17	1.1	0	-	17	0.8	202	2.4
Dwellinghouse Breaking	45	1.0	44	2.5	89	1.4	0	-	0	-	0		89	1.1
Forcible Rape	16	0.4	5	0.3	21	0.3	0	-	0	-	0		21	0.3
Grand Larceny	182	4.1	77	4.4	259	4.2	3	0.2	3	0.5	6	0.3	265	3.2
Loitering	14	0.3	28	1.6	42	0.7	4	0.3	8	1.4	12	0.5	54	0.7
Murder & Manslaughter	2	*	4	0.2	6	0.1	0	-	0	-	0	-	6	0.1
Outhouse Breaking	0	-	0	-	0	-	0	-	0	-	0	-	0	-
Petit Larceny	112	2.5	56	3.2	168	2.7	42	2.8	14	2.4	56	2.7	224	2.7
Poss./Drinking Liquor	277	6.3	8	0.5	285	4.6	53	3.5	3	0.5	56	2.7	341	4.1
Robbery: Purse Snatching	9	0.2	35	2.0	44	0.7	1	0.1	4	0.7	5	0.2	49	0.6
Robbery ---	67	1.5	72	4.1	139	2.3	1	0.1	10	1.7	11	0.5	150	1.8
Runaway: In County	59	1.3	22	1.3	81	1.3	154	10.3	30	5.2	184	8.9	265	3.2
Runaway: Out of County	13	0.3	0	-	13	0.2	21	1.4	4	0.7	25	1.2	38	0.5
Runaway: Out of State	64	1.4	3	0.2	67	1.1	66	4.4	4	0.7	70	3.4	137	1.7
Runaway: AWOL	76	1.7	35	2.0	111	1.8	58	3.9	24	4.2	82	4.0	193	2.3

1975

Table 7. Juvenile Referrals by Reason Referred, Sex and Race (Con't.)

REASON REFERRED	MALE						FEMALE						TOTAL	
	White		Black		Sub T.		White		Black		Sub T.			
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
School House Breaking	3	0.1	3	0.2	6	0.1	0	-	0	-	0	-	6	0.1
Sex Offenses	27	0.6	12	0.7	39	0.6	12	0.8	15	2.6	27	1.3	66	0.8
Shoplifting	254	5.7	218	12.4	472	7.6	243	16.3	141	24.6	384	18.6	856	10.4
Storehouse Breaking	17	0.4	10	0.6	27	0.4	0	-	0	-	0	-	27	0.3
Traffic Offenses	133	3.0	18	1.0	151	2.4	8	0.5	1	0.2	9	0.4	160	1.9
Truancy	134	3.0	21	1.2	155	2.5	98	6.6	18	3.1	116	5.6	271	3.3
Ungovernable Behavior	129	2.9	66	3.8	195	3.2	107	7.2	60	10.5	167	8.1	362	4.4
Uttering a Forged Inst.	20	0.5	12	0.7	32	0.5	6	0.4	6	1.0	12	0.6	44	0.5
Vio. Drug Laws: Narcotic	144	3.2	25	1.4	169	2.7	27	1.8	4	0.7	31	1.5	200	2.4
Vio. Drug Laws	206	4.6	45	2.6	251	4.1	23	1.5	7	1.2	30	1.5	281	3.4
Weapons: Carrying/Possess	32	0.7	20	1.1	52	0.8	4	0.3	3	0.5	7	0.3	59	0.7
Neighborhood Complaint	3	0.1	0	-	3	0.1	2	0.1	2	0.3	4	0.2	7	0.1
Other	194	4.4	96	5.5	290	4.7	34	2.3	8	1.4	42	2.0	332	4.0
Burglary	650	14.7	363	20.7	1,011	16.4	29	1.9	4	0.7	33	1.6	1 046	12.7
Possess. Burglary Tools	17	0.4	14	0.8	31	0.5	0	-	1	0.2	1	0.1	32	0.4
False Alarms	25	0.6	8	0.5	33	0.5	1	0.1	1	0.2	2	0.1	35	0.4
Glue/Paint Sniffing	186	4.2	6	0.3	192	3.1	36	2.4	0	-	36	1.7	228	2.8
TOTAL	4,431	100.0	1,752	100.1	6,183	99.9	1,494	100.0	574	99.9	2,068	100.0	8,251	99.9

*Less than 0.1 percent.

1976

Table 2. Juvenile Referrals by Reason Referred, Sex and Race

REASON REFERRED	MALE						FEMALE						TOTAL	
	White		Black		Sub T		White		Black		Sub T			
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Non Support	1	*	0	-	1	*	0	-	0	-	0	-	1	*
Paternity	3	.1	8	.4	11	.2	0	-	0	-	0	-	11	.1
Marriage Request	1	*	0	-	1	*	6	.4	0	-	6	.3	7	.1
Arson	44	1.1	18	.9	62	1.1	2	.1	0	-	2	.1	64	.8
Assault: Aggravated	69	1.7	67	3.5	136	2.3	15	1.0	23	3.5	38	1.8	174	2.2
Assault	150	3.7	121	6.3	271	4.6	25	1.7	49	7.4	74	3.5	345	4.3
Attempted Suicide	2	.1	0	-	2	*	1	.1	1	.2	2	.1	4	.1
Auto Tampering	5	.1	14	.7	19	.3	0	-	0	-	0	-	19	.2
Auto Theft	9	.2	3	.2	12	.2	1	.1	0	-	1	*	13	.2
Unauthorized Use of Auto	49	1.2	18	.9	67	1.1	3	.2	0	-	3	.1	70	.9
Banding To Commit Felony	8	.2	4	.2	12	.2	2	.1	1	.2	3	.1	15	.2
Disorderly Conduct	262	6.5	91	4.7	353	5.9	60	4.1	23	3.5	83	3.9	436	5.4
Destruction of Property	105	2.6	50	2.6	155	2.6	9	.6	1	.2	10	.5	165	2.0
Dependency	236	5.9	132	6.8	368	6.2	255	17.6	112	17.0	367	17.4	735	9.1
Drunkenness	192	4.8	1	.1	193	3.3	25	1.7	1	.2	26	1.2	219	2.7
Dwellinghouse Breaking	16	.4	10	.5	26	.4	0	-	0	-	0	-	26	.3
Forcible Rape	14	.3	18	.9	32	.5	0	-	0	-	0	-	(32)	.4
Grand Larceny	277	6.9	155	8.0	432	7.3	15	1.0	24	3.7	39	1.9	471	5.8
Loitering	10	.2	18	.9	28	.5	5	.4	2	.3	7	.3	35	.4
Murder and Manslaughter	7	.2	7	.4	14	.2	2	.1	0	-	2	.1	16	.2
Outhouse Breaking	1	*	0	-	1	*	0	-	0	-	0	-	1	*
Petit Larceny	258	6.4	140	7.3	398	6.7	172	11.8	64	9.7	236	11.2	634	7.9
Possessing/Drinking Liquor	254	6.3	10	.5	264	4.4	45	3.1	0	-	45	2.1	309	3.8
Robbery: Purse Snatching	12	.3	14	.7	26	.4	3	.2	3	.4	6	.3	32	.4
Robbery	44	1.1	81	4.2	125	2.1	3	.2	5	.8	8	.4	133	1.6
Runaway: In County	79	2.0	23	1.2	102	1.7	167	11.5	33	5.0	200	9.5	302	3.7
Runaway: Out of County	12	.3	2	.1	14	.2	24	1.7	0	-	24	1.1	38	.5
Runaway: Out of State	34	.8	2	.1	36	.6	64	4.4	6	.9	70	3.3	106	1.3
Runaway: AWOL	53	1.3	15	.8	68	1.2	26	1.8	10	1.5	36	1.7	104	1.3

*Less than .1 per cent.

1976

Table 2. Continued

REASON REFERRED	MALE						FEMALE						TOTAL	
	White		Black		Sub T		White		Black		Sub T			
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
School House Breaking	2	.1	6	.3	8	.1	0	-	0	-	0	-	8	.1
Sex Offenses	16	.4	22	1.1	38	.6	7	.5	8	1.2	15	.7	53	.7
Shoplifting	89	2.2	149	7.7	238	4.0	83	5.7	128	19.5	211	10.0	449	5.6
Storehouse Breaking	3	.1	2	.1	5	.1	0	-	0	-	0	-	5	.1
Traffic Offenses	147	3.6	12	.6	159	2.7	13	.9	5	.8	18	.9	177	2.2
Truancy	253	6.3	76	3.9	329	5.5	209	14.4	54	8.2	263	12.5	592	7.3
Ungovernable Behavior	126	3.1	65	3.4	191	3.2	95	6.5	62	9.4	157	7.4	348	4.3
Uttering a Forged Inst.	11	.3	5	.3	16	.3	6	.4	10	1.5	16	.8	32	.4
Vio. Drug Laws: Narcotic	55	1.4	21	1.1	76	1.3	11	.8	1	.2	12	.6	88	1.1
Vio. Drug Laws	194	4.8	45	2.3	239	4.0	23	1.6	7	1.1	30	1.4	269	3.3
Weapons: Carrying/Poss.	18	.4	19	1.0	37	.6	3	.2	6	.9	9	.4	46	.6
Neighborhood Complaint	2	.1	0	-	2	*	0	-	0	-	0	-	2	*
Other	197	4.9	105	5.4	302	5.1	35	2.4	13	2.0	48	2.3	350	4.3
Burglary	587	14.6	350	18.2	937	15.7	27	1.9	5	.8	32	1.5	969	12.0
Possessing Burglary Tools	5	.1	21	1.1	26	.4	0	-	0	-	0	-	26	.3
False Alarms	13	.3	5	.3	18	.3	0	-	0	-	0	-	18	.2
Glue/Paint Sniffing	105	2.6	4	.2	109	1.8	11	.8	0	-	11	.5	120	1.5
TOTAL	4,030	100.0	1,929	99.9	5,959	99.9	1,453	100.0	657	100.1	2,110	99.9	8,069	99.9

*Less than.1 per cent.

Table 2. Juvenile Referrals by Reason Referred, Sex and Race

REASON REFERRED	MALE White No.	%	MALE Black No.	%	MALE Sub T. No.	%	FEMALE White No.	%	FEMALE Black No.	%	FEMALE Sub T. No.	%	TOTAL No.	%
Murder/Manslaughter	3	.1	9	.5	12	.2	0	-	1	.2	1	.1	13	.2
Assault (1-3 Degree	59	1.6	57	3.4	116	2.1	10	.8	13	2.0	23	1.1	139	1.9
Wanton Endangerment (1)	69	1.8	37	2.2	106	1.9	4	.3	3	.4	7	.3	113	1.5
Unlawful Imprisonment (1)	1	-*	1	.1	2	-*	0	-	1	.2	1	.1	3	-
Robbery	66	1.7	85	5.1	151	2.8	3	.2	6	.9	9	.4	160	2.1
Rape)	11	.3	4	.2	15	.3	0	-	0	-	0	-	15	.2
Felonious Sex Offense	14	.4	6	.4	20	.4	0	-	0	-	0	-	20	.3
Burglary	592	15.7	337	20.1	929	17.0	29	2.2	9	1.4	38	1.9	967	13.0
Criminal Mischief	16	.4	6	.4	22	.4	1	.1	0	-	1	.1	23	.3
Arson	15	.4	9	.5	24	.4	3	.2	0	-	3	.2	27	.4
Theft (Over $100)	369	9.8	154	9.2	523	9.6	37	2.7	38	5.8	75	3.8	598	8.0
Receiving Stolen Property (Over $100)	67	1.8	28	1.7	95	1.7	4	.3	2	.3	6	.3	101	1.4
Forgery	8	.2	8	.5	16	.3	3	.2	2	.3	5	.3	21	.3
Narcotics (Schedule I)	6	.2	1	.1	7	.1	5	.4	1	.2	6	.3	13	.2
Trafficking (I,II,III)	23	.6	3	.2	26	.5	3	.2	1	.2	4	.2	30	.4
Assault (3)	76	2.0	61	3.6	137	2.5	17	1.3	37	5.6	54	2.7	191	2.6
Menacing	16	.4	12	.7	28	.5	4	.3	2	.3	6	.3	34	.5
Wanton Endangerment (2)	13	.3	5	.3	18	.3	1	.1	1	.2	2	.1	20	.3
Terroristic Threat	21	.6	20	1.2	41	.8	2	.1	4	.6	6	.3	47	.6
Unlawful Imprisonment	0	-	0	-	0	-	0	-	0	-	0	-	0	-
Sex Offenses	21	.6	12	.7	33	.6	9	.7	20	3.0	29	1.4	62	.8
Possessing Burglary Tools	17	.5	7	.4	24	.4	0		0		0	-	24	.3
Criminal Trespassing (1-2)	52	1.4	33	2.0	85	1.6	5	.4	1	.2	6	.3	91	1.2
Criminal Mischief (2-3)	81	2.1	31	1.8	112	2.1	13	1.0	4	.6	17	.8	129	1.7
Theft (Under $100)	237	6.3	269	16.0	506	9.3	201	14.9	193	29.5	394	17.7	900	12.1
Receiving Stolen Property (Under $100)	12	.3	11	.7	23	.4	2	.1	2	.3	4	.2	27	.4
Unauthorized Use of Auto	9	.2	5	.3	14	.3	3	.2	1	.2	4	.2	18	.2
Forgery (3)	12	.3	2	.1	14	.3	3	.2	2	.3	5	.3	19	.3

*Less than .1 percent.

1977

Table 2. Continued.

REASON REFERRED	MALE White No.	%	MALE Black No.	%	MALE Sub T. No.	%	FEMALE White No.	%	FEMALE Black No.	%	FEMALE Sub T. No.	%	TOTAL No.	%
Disorderly Conduct	333	8.8	95	5.7	428	7.9	81	6.0	37	5.6	118	5.9	546	7.3
Controlled Substance Vio.	16	.4	3	.2	19	.3	2	.1	0	-	2	.1	21	.3
Marijuana Violation	203	5.4	44	2.6	247	4.5	37	2.7	8	1.2	45	2.3	292	3.9
Concealed Deadly Weapon	14	.4	14	.8	28	.5	1	.1	1	.2	2	.1	30	.4
Criminal Trespass (3)	33	.9	15	.9	48	.9	5	.4	0	-	5	.3	53	.7
Loitering	10	.3	23	1.4	33	.6	1	.1	5	.7	6	.3	39	.5
Improper Use of Solvent	106	2.8	2	.1	108	2.0	10	.8	0	-	10	.5	118	1.6
AWOL from Facility	39	1.0	8	.5	47	.9	28	2.1	8	1.2	36	1.8	83	1.1
Alcohol/Drunk Violation	409	10.8	26	1.5	435	8.0	81	6.0	2	.3	83	4.1	518	7.0
Traffic Offense	147	3.9	12	.7	159	2.9	12	.9	1	.2	13	.6	172	2.3
False Alarms	5	.1	0	-	5	.1	1	.1	0	-	1	.1	6	.1
Neighborhood Complaint	4	.1	2	.1	6	.1	0	-	0	-	0	-	6	.1
Runaway	106	2.8	17	1.0	123	2.3	294	21.8	49	7.5	343	17.1	466	6.3
Truancy	81	2.1	21	1.3	102	1.9	67	5.0	11	1.7	78	3.9	180	2.4
Ungovernable Behavior	102	2.7	47	2.8	149	2.7	85	6.3	40	6.1	125	6.3	274	3.7
Marriage Request	0	-	0	-	0	-	3	.2	0	-	3	.1	3	-*
Abused Child	59	1.6	20	1.2	79	1.4	71	5.3	26	4.0	97	4.8	176	2.4
Neglected Child	184	4.9	102	6.1	286	5.2	157	11.7	102	15.6	259	12.9	545	7.3
Sexual Abuse	2	.1	3	.2	5	.1	14	1.0	5	.7	19	.9	24	.3
Temporary Custody	33	.9	10	.6	43	.8	34	2.5	15	2.3	49	2.4	92	1.2
Other	3	.1	0	-	3	.1	0	-	0	-	0	-	3	-*
TOTAL	3,775	100.1	1,677	100.1	5,452	100.0	1,346	100.0	654	100.0	2,000	100.1	7,452	100.1

*Less than .1 percent.

Table 2. JUVENILE REFERRALS BY REASON REFERRED, SEX AND RACE

REASON REFERRED	WHITE						BLACK						TOTAL	
	MALE		FEMALE		Sub T.		MALE		FEMALE		Sub T.			
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
FELONIES														
Murder/Manslaughter	5	.1	0	-	5	.1	3	.2	2	.3	5	.2	10	.1
Assault (1-2 Degree)	74	2.0	5	.4	79	1.6	58	3.2	11	1.8	69	2.9	148	2.0
Wanton Endangerment (1)	48	1.3	2	.1	50	1.0	44	2.4	5	.8	49	2.0	99	1.3
Unlawful Imprisonment (1)	0	-	2	.1	2	-*	2	.1	0	-	2	.1	4	.1
Robbery	71	1.9	2	.1	73	1.4	83	4.6	5	.8	88	3.7	161	2.2
Rape	9	.3	0	-	9	.2	12	.7	1	.2	13	.5	22	.3
Felonious Sex Offense	15	.4	0	-	15	.3	6	.3	0	-	6	.3	21	.3
Burglary	525	14.3	37	2.7	562	11.1	315	17.5	10	1.7	325	13.5	887	11.9
Criminal Mischief (1)	14	.4	1	.1	15	.3	10	.6	1	.2	11	.5	26	.3
Arson	17	.5	6	.4	23	.4	4	.2	1	.2	5	.2	28	.4
Theft (Over $100)	283	7.7	39	2.8	322	6.4	190	10.5	28	4.7	218	9.1	540	7.2
Receiving Stolen Property (Over $100)	60	1.6	5	.4	65	1.3	26	1.4	1	.2	27	1.1	92	1.2
Forgery (1-2)	10	.3	6	.4	16	.3	4	.2	4	.7	8	.3	24	.3
Narcotics (Schedule I)	5	.1	6	.4	11	.2	0	-	0	-	0	-	11	.1
Trafficking (I, II, III)	29	.8	4	.3	33	.6	6	.3	1	.2	7	.3	40	.5
MISDEMEANORS														
Assault (3)	76	2.1	13	.9	89	1.8	59	3.3	20	3.3	79	3.3	168	2.3
Menancing	21	.6	10	.7	31	.6	6	.3	4	.7	10	.4	41	.5
Wanton Endangerment (2)	9	.3	1	.1	10	.2	14	.8	1	.2	15	.6	25	.3
Terroristic Threat	24	.7	9	.6	33	.6	12	.7	1	.2	13	.5	46	.6
Unlawful Imprisonment	1	-*	0	-	1	-*	0	-	0	-	0	-	1	-*
Sex Offenses	15	.4	10	.7	25	.5	7	.4	13	2.2	20	.8	45	.6
Possessing Burglary Tools	10	.3	0	-	10	.2	15	.8	0	-	15	.6	25	.3
Criminal Trespassing (1-2)	55	1.5	9	.6	64	1.3	48	2.7	0	-	48	2.0	112	1.5
Criminal Mischief (2-3)	101	2.8	11	.8	112	2.2	53	2.9	1	.2	54	2.3	166	2.2
Theft (Under $100)	343	9.4	273	19.5	616	12.2	297	16.5	180	29.9	477	19.9	1,093	14.6
Receiving Stolen Property (Under $100)	18	.5	7	.5	25	.5	8	.4	3	.5	11	.5	36	.5
Unauthorized Use of Auto	13	.4	0	-	13	.3	5	.3	1	.2	6	.3	19	.3
Forgery (3)	3	.1	1	.1	4	.1	4	.2	2	.3	6	.3	10	.1

*Denotes less than .1 percent.

1978

Table 2. JUVENILE REFERRALS BY REASON REFERRED, SEX AND RACE (Continued)

REASON REFERRED	WHITE MALE No.	%	WHITE FEMALE No.	%	WHITE Sub T. No.	%	BLACK MALE No.	%	BLACK FEMALE No.	%	BLACK Sub T. No.	%	TOTAL No.	%
MISDEMEANORS CONTINUED														
Disorderly Conduct	315	8.6	90	6.4	405	8.0	106	5.9	26	4.3	132	5.5	537	7.2
Controlled Substance Vio.	16	.4	10	.7	26	.5	3	.2	1	.2	4	.2	30	.4
Marijuana Violation	206	5.6	37	2.7	243	4.8	48	2.7	11	1.8	59	2.5	302	4.0
Concealed Deadly Weapon	23	.6	3	.2	26	.5	14	.8	1	.2	15	.6	41	.5
MISC./VIOLATIONS														
Criminal Trespass (3)	59	1.6	8	.6	67	1.3	44	2.4	0	-	44	1.8	111	1.5
Loitering	9	.3	8	.6	17	.3	10	.6	3	.5	13	.5	30	.4
Improper Use of Solvent	92	2.5	16	1.1	108	2.1	0	-	0	-	0	-	108	1.4
AWOL from Facility	27	.7	28	2.0	55	1.1	4	.2	8	1.3	12	.5	67	.9
Alcohol/Drunk Violation	396	10.8	59	4.2	455	9.0	26	1.4	8	1.3	34	1.4	489	6.6
Traffic Offense	102	2.8	16	1.1	118	2.3	12	.7	2	.3	14	.6	132	1.8
False Alarms	1	-*	1	.1	2	-*	1	.1	1	.2	2	.1	4	.1
Neighborhood Complaint	2	.1	0	-	2	-*	0	-	3	.5	3	.1	5	.1
STATUS OFFENSES														
Runaway	100	2.7	224	16.0	324	6.4	21	1.2	32	5.3	53	2.2	377	5.1
Truancy	95	2.6	80	5.7	175	3.5	29	1.6	33	5.5	62	2.6	237	3.2
Ungovernable Behavior	96	2.6	55	3.9	151	3.0	61	3.4	41	6.8	102	4.2	253	3.4
PROTECTIVE SERVICES														
Marriage Request	1	-*	4	.3	5	.1	0	-	0	-	0	-	5	.1
Abused Child	52	1.4	67	4.8	119	2.4	25	1.4	21	3.5	46	1.9	165	2.2
Neglected Child	140	3.8	136	9.7	276	5.5	80	4.4	70	11.5	150	6.2	426	5.7
Sexual Abuse	1	-*	13	.9	14	.3	0	-	1	.2	1	.-*	15	.2
Temporary Custody	74	2.0	85	6.1	159	3.1	24	1.3	39	6.5	63	2.6	222	3.0
Other	3	.1	1	.1	4	.1	2	.1	4	.7	6	.3	10	.1
TOTAL	3,664	100.0	1,400	99.9	5,064	100.0	1,801	99.9	601	100.1	2,402	100.0	,466	99.9

*Denotes less than .1 percent.

Table 3. JUVENILE REFERRALS BY REASON REFERRED, SEX AND RACE

REASON REFERRED	WHITE						BLACK						TOTAL	
	Male		Female		Sub T		Male		Female		Sub T			
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
FELONIES														
Murder/Manslaughter	4	.1	0	-	4	.1	5	.3	0	-	5	.2	9	.1
Assault (1-2 Degree)	59	1.5	15	1.0	74	1.4	58	3.5	7	1.2	65	2.9	139	1.8
Wanton Endangerment (1)	70	1.8	7	.5	77	1.4	30	1.8	5	.8	35	1.5	112	1.4
Unlawful Imprisonment (1)	2	.1	1	.1	3	.1	0	-	0	-	0	-	3	*
Robbery	61	1.5	6	.4	67	1.2	94	5.7	9	1.5	103	4.5	170	2.2
Rape	3	.1	0	-	3	.1	7	.4	0	-	7	.3	10	.1
Felonious Sex Offense	11	.3	1	.1	12	.2	14	.8	0	-	14	.6	26	.3
Burglary	653	16.4	45	3.0	698	12.8	331	19.9	16	2.6	347	15.3	1,045	13.5
Criminal Mischief (1)	22	.5	0	-	22	.4	8	.5	1	.2	9	.4	31	.4
Arson	38	1.0	4	.2	42	.8	12	.7	1	.2	13	.6	55	.7
Theft (Over $100)	280	7.0	35	2.3	315	5.8	163	9.8	23	3.8	186	8.2	501	6.5
Receiving Stolen Property (Over $100)	61	1.5	5	.3	66	1.2	39	2.3	3	.5	42	1.8	108	1.4
Forgery (1-2)	11	.3	6	.4	17	.3	6	.4	1	.2	7	.3	24	.3
Narcotics (Schedule I)	7	.2	1	.1	8	.1	0	-	0	-	0	-	8	.1
Trafficking (I, II, III)	29	.7	1	.1	30	.5	3	.2	0	-	3	.1	33	.4
MISDEMEANORS														
Assault (3)	69	1.7	24	1.6	93	1.7	57	3.4	24	4.0	81	3.6	174	2.2
Menacing	22	.5	6	.4	28	.5	7	.4	4	.6	11	.5	39	.5
Wanton Endangerment (2)	13	.3	1	.1	14	.3	11	.7	4	.6	15	.7	29	.4
Terroristic Threat	35	.9	4	.2	39	.7	10	.6	4	.6	14	.6	53	.7
Unlawful Imprisonment	0	-	0	-	0	-	0	-	0	-	0	-	0	-
Sex Offenses	15	.4	9	.6	24	.4	6	.4	6	1.0	12	.5	36	.5
Possessing Burglary Tools	16	.4	1	.1	17	.3	15	.9	0	-	15	.7	32	.4
Criminal Trespassing (1-2)	68	1.7	11	.7	79	1.4	22	1.3	2	.3	24	1.1	103	1.3
Criminal Mischief (2-3)	100	2.5	4	.2	104	1.9	42	2.5	2	.3	44	1.9	148	1.9
Theft (Under $100)	334	8.4	257	17.2	591	10.8	293	17.6	160	26.4	453	0.0	1,044	13.5
Receiving Stolen Property (Under $100)	13	.3	1	.1	14	.3	6	.4	0	-	6	.3	20	.3
Unauthorized Use of Auto	7	.2	2	.1	9	.2	0	-	0	-	0	-	9	.1
Forgery (3)	2	.1	0	-	2	*	1	.1	1	.2	2	.1	4	.1

*Denotes less than percent.

1979

Table 3. JUVENILE REFERRALS BY REASON REFERRED, SEX AND RACE (Continued)

REASON REFERRED	WHITE						BLACK						TOTAL	
	Male		Female		Sub T		Male		Female		Sub T			
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
MISDEMEANORS CONTINUED														
Disorderly Conduct	297	7.5	116	7.8	413	7.5	82	4.9	38	6.3	120	5.3	533	6.9
Controlled Substance Vio	12	.3	7	.5	19	.3	6	.4	0	-	6	.3	25	.3
Marijuana Violation	226	5.7	43	2.9	269	4.9	33	2.0	5	.8	38	1.7	307	4.0
Concealed Deadly Weapon	24	.6	0	-	24	.4	13	.8	2	.3	15	.7	39	.5
MISC./VIOLATIONS														
Criminal Trespass (3)	48	1.2	5	.3	53	1.0	24	1.4	8	1.3	32	1.4	85	1.1
Loitering	11	.3	3	.2	14	.3	5	.3	3	.5	8	.4	22	.3
Improper Use of Solvent	50	1.3	6	.4	56	1.0	3	.2	0	-	3	.1	59	.8
ANOL from Facility	47	1.2	42	2.8	89	1.6	6	.4	8	1.3	14	.6	103	1.3
Alcohol/Drunk Violation	542	13.6	115	7.7	657	12.0	23	1.4	6	1.0	29	1.3	686	8.9
Traffic Offense	110	2.8	13	.9	123	2.2	11	.7	3	.5	14	.6	137	1.8
False Alarms	1	-*	3	.2	4	.1	2	.1	0	-	2	.1	6	.1
Neighborhood Complaint	0	-	0	-	0	-	0	-	0	-	0	-	0	-
STATUS OFFENSES														
Runaway	124	3.1	241	16.1	365	6.7	16	1.0	45	7.4	61	2.7	426	5.5
Truancy	111	2.8	83	5.6	194	3.5	31	1.9	29	4.8	60	2.6	254	3.3
Ungovernable Behavior	84	2.1	46	3.1	130	2.4	34	2.0	37	6.1	71	3.1	201	2.6
PROTECTIVE SERVICES														
Marriage Request	2	.1	3	.2	5	.1	0	-	0	-	0	-	5	.1
Abused Child	57	1.4	86	5.8	143	2.6	21	1.3	28	4.6	49	2.2	192	2.5
Neglected Child	137	3.4	115	7.7	252	4.6	72	4.3	67	11.0	139	6.1	391	5.0
Sexual Abuse	1	-*	20	1.3	21	.4	4	.2	4	.7	8	.4	29	.4
Temporary Custody	82	2.1	98	6.6	180	3.3	33	2.0	51	8.4	84	3.7	264	3.4
Other	9	.2	1	.1	10	.2	3	.2	0	-	3	.1	13	.2
TOTAL	3,980	100.1	1,493	100.0	5,473	100.0	1,662	100.1	607	100.0	2,269	100.1	7,742	100.1

*Denotes less than .1 percent.

SUPREME COURT OF THE UNITED STATES

No. 87-5765

Kevin N. Stanford,

Petitioner

v.

Kentucky

ON PETITION FOR WRIT OF CERTIORARI TO THE Supreme Court of Kentucky.

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

October 11, 1988

SUPREME COURT OF THE UNITED STATES

No. 87-5765

Kevin N. Stanford,

Petitioner

v.

Kentucky

"The order of October 11, 1988, granting the petition for a writ of certiorari is amended as follows:

"The motion of petitioner for leave to proceed *in forma pauperis* is granted. The petition for a writ of certiorari is granted limited to Question VIII presented by the petition. The case is set for oral argument in tandem with No. 87-6026, *Wilkins v. Missouri*, in place of No. 87-5666, *High v. Zant*."

October 17, 1988